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Report of the Commission of Inquiry on Burundi*

Summary

The Commission of Inquiry on Burundi was created by Human Rights Council resolution 33/24, adopted on 30 September 2016, to conduct a thorough investigation into human rights violations and abuses committed in Burundi since April 2015, to determine whether any of them may constitute international crimes and to identify their alleged perpetrators.

The Commission can confirm the persistence of extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, torture and cruel, inhuman or degrading treatment and sexual violence in Burundi since April 2015. Most of these violations were committed by members of the National Intelligence Service, the police, the army and the youth league of the ruling party, commonly known as the Imbonerakure. The Commission emphasizes the scope and the gravity of the documented violations, which, in some instances, entailed serious physical and psychological trauma for the victims. Human rights abuses were also committed by armed opposition groups, but these proved difficult to document.

The Commission has reasonable grounds to believe that crimes against humanity have been committed in Burundi since April 2015.

Without a real willingness on the part of the Burundian authorities to combat impunity and guarantee the independence of the judiciary, the perpetrators of these crimes will remain unpunished. The Commission therefore requests the International Criminal Court to initiate, as soon as possible, an investigation into the situation in Burundi since April 2015.

* The annexes to the present document are being circulated in the language of submission only.

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I. Introduction

A. Mandate

1. The Commission of Inquiry on Burundi (hereinafter "the Commission") was created for a period of one year by Human Rights Council resolution 33/24, adopted on 30 September 2016, to conduct a thorough investigation into human rights violations and abuses committed in Burundi since April 2015 and, in particular, to assess their extent, determine whether they constitute international crimes, identify their alleged perpetrators and formulate recommendations on steps to be taken with a view to guaranteeing that the latter, regardless of their affiliation, are held accountable for their acts.

2. On 22 November 2016, the President of the Human Rights Council appointed Fatsah Ouguergouz (Algeria), Reine Alapini Gansou (Bénin) and Françoise Hampson (United Kingdom) as members of the Commission, which was chaired by Mr. Ouguergouz. The Commission members were assisted by a secretariat established by the Office of the United Nations High Commissioner for Human Rights.

3. The Commission presented two oral briefings during the thirty-fourth and thirty-fifth sessions of the Human Rights Council in March and June 2017. The present report summarizes the final conclusions of its investigations, which will be detailed in a separate document.[1]

B. Cooperation by Burundi with the Commission

4. In its resolution 33/24, the Human Rights Council urged the Government of Burundi to cooperate fully with the Commission of Inquiry, to authorize it to conduct visits to the country and to provide it with all the information necessary to fulfil its mandate. Notwithstanding that request, the Government of Burundi refused any form of dialogue or cooperation with the Commission in spite of several initiatives by the latter.

5. In fact, as of the completion of the present report, the Commission had sent three notes verbales to the Permanent Mission of Burundi in Geneva and two letters to the Minister for Foreign Affairs.[2] It requested the Burundian authorities to grant it access to the country and to inform it of their views on the human rights situation in Burundi, particularly in regard to attacks against agents of the State or members of the ruling party. These requests have gone unanswered.

C. Methodology

6. Following the practice of other commissions of inquiry which had been denied access to the territory covered by their mandate, the Commission visited neighbouring countries (Uganda, the Democratic Republic of the Congo, Rwanda and the United Republic of Tanzania) and other countries hosting Burundian refugees. These visits, as well as numerous contacts from a distance, enabled the Commission to conduct more than 500 interviews with victims, witnesses and other sources.

7. The Commission adopted the same standard of proof as most of the commissions of inquiry on human rights, namely "reasonable grounds to believe". It therefore took care to collect a body of reliable and consistent information on the basis of which a reasonable and ordinarily prudent person would have reason to believe that an incident or pattern of conduct had occurred.

8. In addition to the lack of cooperation on the part of the Government and the latter's refusal to grant it access to the country, the Commission was faced with the difficulty of

[1] Detailed final report of the Commission of Inquiry on Burundi.

[2] See annex II.

conducting an inquiry on Burundi when victims and witnesses are still afraid to talk about their experiences. In the short period of time allotted to it, the Commission could not conduct a thorough investigation of certain cases and cover all the violations and abuses. It was nevertheless able to document a significant sample.

D. Applicable law

9. Burundi is a party to seven of the principal international human rights instruments: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the two Optional Protocols thereto, and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. It is also a party to the African Charter on Human and Peoples' Rights and other relevant African instruments.

10. Burundi has ratified the Convention on the Prevention and Punishment of the Crime of Genocide and, since 2004, has been a party to the Rome Statute of the International Criminal Court.[3] However, on 27 October 2016, it notified the Secretary-General of the United Nations of its decision to withdraw from the latter treaty. Since such withdrawal does not take effect until one year has elapsed, that notification did not affect the work of the Commission, which conducted its juridical analysis using the definition of crimes contained in the Rome Statute.

11. The Commission did not regard international humanitarian law as being applicable within the framework of its mandate insofar as, given the sporadic nature of the attacks carried out or claimed by armed groups in Burundi since April 2015, the existence of a non-international armed conflict could not be inferred therefrom.[4]

II. Human rights situation

A. Main trends

12. The political crisis that Burundi has faced since 2015 has been compounded by a grave human rights crisis. Although warning signs of that situation had been observed before 25 April 2015,[5] President Pierre Nkurunziza's announcement on that date of his decision to seek a new term in office was followed by a significant deterioration in the human rights situation. The Commission documented violations that were frequently of an extremely cruel nature, particularly extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and other cruel, inhuman or degrading treatment and sexual violence. Such violations had already been reported by the United

[3] On 25 April 2016, the Prosecutor of the International Criminal Court opened a preliminary examination to determine whether crimes falling within the Court's jurisdiction had been committed in Burundi.

[4] Article 1, paragraph 2, of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts, stipulates that "this Protocol shall not apply to [...] isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts".

[5] Inter alia by the Human Rights Committee, the Committee against Torture, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Rapporteur on the situation of human rights defenders.

Nations High Commissioner for Human Rights,[6] the United Nations independent investigation on Burundi[7] and the African Commission on Human and Peoples' Rights.[8]

13. The large number of testimonies collected by the Commission clearly show that the demonstrations which began in April 2015, the failed coup d'état in May 2015 and the attacks against four military installations in and around Bujumbura on 11 December 2015 constituted decisive stages in the escalation of violence in 2015. This climate conducive to human rights violations continued in 2016 and 2017, maintained by hate speech on the part of the authorities and members of the ruling party — the Conseil national pour la défense de la démocratie-Forces de défense de la démocratie (CNDD-FDD) — and also by the pervasive impunity that was aggravated by a judiciary lacking independence. Some violations have been committed in a more clandestine, but equally brutal, manner since 2016.

14. The victims, mostly young men (with the exception of victims of sexual violence), were invariably opponents of the Government or perceived as such: demonstrators against Pierre Nkurunziza's candidature in the presidential election of 2015; members of opposition political parties, particularly the Mouvement pour la solidarité et la démocratie, and the Forces nationales de libération, as well as their relatives; members of the former Burundian Armed Forces ("ex-FAB");[9] members of civil society; journalists; persons suspected of supporting or participating in the failed coup; and members and sympathizers of armed opposition groups or persons who, having gone into exile, were thereby suspected of joining those groups. The Commission also noted a phenomenon of recruitment of the population into CNDD-FDD and its youth league, the Imbonerakure. Any resistance often led to human rights violations.

15. The Commission's interviews revealed a climate of deep and widespread fear: fear of testifying in view of the risk of reprisals, fear of persecution, even in exile, and fear of returning to the country. In mid-July 2017, the Burundian refugee population was estimated at 417,098 persons,[10] i.e. around 4 per cent of the country's total population. Many members of civil society, as well as journalists, remain in exile and international arrest warrants have been issued against some of them. Those who are still in Burundi have to work underground. The Government has suspended or revoked the licences of the principal independent media and human rights organizations.

16. The violations of civil and political rights have had a direct impact on the enjoyment of economic, social and cultural rights due to the restriction of freedoms, particularly freedom of movement, and the decision taken by the main donors to suspend much of their direct aid to the Government as a consequence of those violations. The deteriorating economic situation has, in turn, exacerbated the phenomenon of extortion, which has taken various forms, including ransom demands by agents of the State, the release of detainees in exchange for payment, the imposition of new taxes on an already impoverished population, and extortion by Imbonerakure.

B. Responsibility

1. The State's responsibility for the conduct of its organs

17. Under international law, including human rights law, the State is responsible for the conduct of its organs regardless of whether they exercise legislative, executive, judicial or any other functions, whatever position they hold in the organization of the State and

[6] See A/HRC/32/30.

[7] See A/HRC/33/37.

[8] Report of the African Commission on Human and Peoples' Rights on its fact-finding mission to Burundi (7-13 December 2015).

[9] The term "ex-FAB" refers to members of the former Burundian Armed Forces, the majority of whom were Tutsis. The Burundian army found itself in a deeply divided state after the attempted coup in May 2015 and this led to marginalization of the "ex-FAB" and their subjection to human rights violations.

[10] Office of the United Nations High Commissioner for Refugees, 20 July 2017.

whatever their character as an organ of the central Government or of a territorial unit of the State.[11] The Commission was able to ascertain that, since April 2015, the defence and security forces have been the principal perpetrators of human rights violations in Burundi, even when they acted jointly with non-State actors such as the Imbonerakure.

18. Members of the National Intelligence Service, including senior officials, in Bujumbura and in several provinces have committed acts for which the State can be held responsible, including extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence. The National Intelligence Service reports directly to the President of the Republic and its operations are managed by an Administrator General.

19. The Burundian National Police have played an active role since the first demonstrations against President Nkurunziza's candidature for a new term in office. Since April 2015, police officers have committed summary executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence. Some units, including the Unit for the Protection of Institutions (*Appui à la protection des institutions*) and the Anti-Riot Brigade, which was established in September 2015, have been particularly implicated in gross violations of human rights.

20. The Burundian army (National Defence Force), which kept a low profile at the beginning of the crisis, has played an increasingly active role in the repression of real or presumed opponents. In the testimonies collected by the Commission, military personnel have been identified as the alleged perpetrators of summary executions, arbitrary arrests, torture and cruel, inhuman or degrading treatment. Among the units involved in grave violations of human rights, the Commission has identified the Special Brigade for the Protection of Institutions, the Combat Engineer Battalion (Camp Muzinda) and the Support Battalion of the First Military Region (Camp Muha) in Bujumbura.

21. The Commission also documented cases in which local administrative authorities committed or ordered the commission of human rights violations, including arbitrary arrests.

22. A number of testimonies showed that, in reality, the State operates largely through a parallel structure based on personal ties inherited from the time when certain CNDD-FDD authorities were waging an underground armed struggle; these ties were strengthened in response to the opposition of some party members who, starting in 2014, had said they were not in favour of a new term in office for President Nkurunziza.[12] Major decisions, including those that have given rise to gross violations of human rights, are allegedly taken not by the Government but by the President and his entourage of "generals", including the Minister of Public Security, the Administrator General of the National Intelligence Service, the heads of the President's civil cabinet and office of police affairs, and the Secretary General of CNDD-FDD. This entourage apparently transmits its decisions through a parallel chain of command, the structure of which varies from one branch and one province to another, with the result that subordinates might sometimes hold more power than their superiors. For example, the Commission ascertained that the Deputy Inspector General of the Police had more power than the Inspector General.

2. Responsibility of the State for the conduct of non-State individuals or groups

23. Under international law, including human rights law, the State may be held generally responsible for the wrongful conduct of non-State individuals or groups when the latter are acting in "complete dependence"[13] on the State. It might also be held responsible

[11] Article 4, paragraph 1, of the articles on responsibility of States for internationally wrongful acts (General Assembly resolution 56/83).

[12] Many high-ranking CNDD-FDD members informed President Nkurunziza of their opposition to his candidature in the 2015 election. Most of them were subsequently forced to flee the country out of concern for their safety.

[13] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*.

in cases in which non-State individuals or groups act on its instructions or under its direction or its "effective control"[14] and also when its own agents acknowledge and adopt the conduct of non-State groups.[15] Bearing these principles in mind, the Commission examined the question of the responsibility of the Burundian State for the acts committed by Imbonerakure, whose involvement in extrajudicial executions, arbitrary arrests and detentions, enforced disappearances and acts of torture and cruel, inhuman or degrading treatment and sexual violence it was able to document.

24. The Commission cannot infer the "complete dependence" of the Imbonerakure on the Burundian State, as this would imply "a particularly great degree of State control over" the persons or entities in question.[16] A certain alignment[17] of the Imbonerakure (and, more generally, of CNDD-FDD) with the Government's policy should nevertheless be emphasized.

25. The Commission was, however, able to establish that members, including senior officials, of the National Intelligence Service, the police, the army and the President's office have close ties to some Imbonerakure, to whom they give instructions or directives to commit human rights violations.

26. In some cases, the Commission was also able to establish the exercise of "effective control" by agents of the State over some Imbonerakure. Numerous witnesses testified that Imbonerakure were present alongside police and intelligence officers, including in detention centres, when violations were committed and that Imbonerakure were seen wearing the same uniforms and carrying the same weapons as the police or the army in the presence and in full view of members of those forces. Moreover, as far as the Commission is aware, very few Imbonerakure have been prosecuted or convicted, and this, in itself, is indicative of a certain degree of indulgence on the part of the Burundian authorities which suggests the existence of a form of control.

27. The Commission also received reports to the effect that some Imbonerakure arrested individuals and handed them over to the National Intelligence Service or the police. This indicates that their conduct was acknowledged and adopted by the authorities.

3. Responsibility of armed opposition groups

28. The Commission received reports concerning targeted attacks by armed opposition groups against military and police posts, as well as more large-scale attacks such as those in Kayanza Province in July 2015 and in and around Bujumbura on 11 December 2015. On the other hand, the Commission was unable to obtain information concerning attacks against civilians by organized armed groups with a known structure. The obstacles to these investigations were partly attributable to the difficulty of gaining access to witnesses, many of whom are in Burundi, and to the fact that the Burundian Government shared no information with the Commission.

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[14] See article 8 of the articles on responsibility of States for internationally wrongful acts; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*.

[15] Article 11 of the articles on responsibility of States for internationally wrongful acts. In its general comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), the African Commission on Human and Peoples' Rights expressed the view that a State could be held responsible for killings by non-State actors if it approved, supported or acquiesced in those acts.

[16] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*.

[17] The International Court of Justice nevertheless requires "systematic alignment" in order to demonstrate "complete dependence" (ibid.).

C. Human rights violations and abuses

1. Right to life

29. The Commission received numerous testimonies concerning violations of the right to life for which the Burundian State can be held responsible. These violations include excessive use of deadly force by the defence and security forces during the demonstrations between April and June 2015. In some cases, the police allegedly took action following acts of violence by demonstrators which led to the death of police officers and members of the ruling party.[18] Members of the Unit for the Protection of Institutions (*Appui à la protection des institutions*), the Anti-Riot Brigade and the Combat Engineer Battalion also committed extrajudicial executions in some neighbourhoods of Bujumbura, including on 13 October 2015 in Ngagara and on 31 October 2015 in Buringa (Bubanza Province). In reprisal for armed attacks against several military positions in Bujumbura and Mujejuru (Bujumbura Province) on 11 December 2015, police and military personnel summarily executed dozens of persons in Bujumbura Mairie, including in Nyakabiga and Musaga. The bodies of persons who had been executed were also found in the commune of Mukike (Bujumbura Province). The extrajudicial executions that took place in December 2015, on a scale that exceeded those reported since April 2015, were accompanied or followed by torture, rape and arbitrary arrests.

30. According to several testimonies, after the events of December 2015 the local administrative authorities ordered bodies to be buried in common graves, particularly in Kanyosha (Bujumbura Mairie) and Mpanda (Bubanza Province). On 29 February 2016, the mayor of Bujumbura informed the media of the discovery of a common grave in Mutakura (Bujumbura Mairie), asserting that the bodies were those of CNDD-FDD sympathizers who had been killed by members of the opposition.[19] Only access to all the alleged sites of common graves, as well as forensic studies and more thorough investigations, would make it possible to determine the validity of those allegations.

31. The Commission received reports of extrajudicial executions of members of the security forces, particularly members of the former Burundian Armed Forces ("ex-FAB"). For example, General Athanase Kararuza, security and defence adviser to the First Vice-President, together with his wife, his daughter and a bodyguard, were killed in Bujumbura by members of the police and the army on 25 April 2016.

32. According to some testimonies, people have died while in the custody of law enforcement agencies, including in places of detention.

33. Lifeless bodies have regularly been found in several provinces, often with their arms tied behind their back, and sometimes decapitated. In several cases, the authorities have ordered the interment of these bodies without identifying the victims and without any credible investigation, thereby failing in their duty to protect the right to life. In other cases, the victims were identified as persons who opposed President Nkurunziza's candidature for a new term in office or as members of opposition parties. Corpses, sometimes weighed down with stones, have been found in the Rusizi River and Lake Tanganyika. Witnesses asserted that persons arrested by the police, military personnel or Imbonerakure had been taken into the Rukoko forest and executed there.

34. The Commission also received reports of summary executions by Imbonerakure, acting either as auxiliaries of the defence and security forces or on their own initiative. For example, on 5 August 2015 in Cibitoke (Bujumbura Mairie), members of the Imbonerakure, accompanied by police officers, executed two men after ordering them to kneel with their hands in the air.

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[18] These acts do not fall within the framework of the Commission's mandate. Since they were not committed by organized groups, they do not constitute human rights abuses, but acts that are punishable under Burundian criminal law.

[19] This assertion was repeated in the March 2016 report of the commission established by the Attorney General to investigate the events of 11 December 2015.

35. The Commission noted several cases of targeted assassination and attempted assassination attributed to members of the National Intelligence Service or the police, such as the assassination of Zedi Feruzi, leader of the Union pour la paix et le développement-Zigamibanga opposition party, on 23 May 2015; the attempted assassination of Pierre Claver Mbonimpa, President of the Association burundaise pour la protection des droits humains et des personnes détenues, on 3 August 2015; and the execution of his son, Welly Nzitonda, on 6 November 2015.

36. The Commission also collected information on assassinations committed by persons whose identity and responsibility it was unable to establish, such as the assassinations of General Adolphe Nshimirimana, the former head of the National Intelligence Service, on 2 August 2015; Colonel Jean Bikomagu, retired, on 15 August 2015; Patrice Gahungu, spokesperson of the Union pour la paix et le développement, on 7 September 2015; Pascal Nshimirimana, son-in-law of Pierre Claver Mbonimpa, on 9 October 2015; Lieutenant Colonel Darius Ikurakure on 22 March 2016; Hafsa Mossi, member of the East African Legislative Assembly, on 13 July 2016; and Emmanuel Niyonkuru, Minister of Water, Environment, Land Management and Urban Planning, on 1 January 2017. Major General Prime Niyongabo, Army Chief of Staff, and Willy Nyamitwe, communications adviser to the President of the Republic, escaped assassination attempts during which other persons were killed on 11 September 2015 and 28 November 2016 respectively.

2. Enforced disappearances

37. Arrest and detention conditions in Burundi are conducive to enforced disappearances. The Commission received several testimonies concerning persons who disappeared after being arrested by members of the National Intelligence Service and/or the police. By way of example, on 9 March 2016, nine policemen, guided by an Imbonerakure travelling in a police vehicle, arrested Hugo Haramategeko, leader of the Nouvelle alliance pour le développement du Burundi party, in Bujumbura. His family has not heard from him since. In some cases, members of the National Intelligence Service or the police have demanded ransoms from the relatives of disappeared persons. Augustin Hatungimana, a member of the Mouvement pour la réhabilitation du citoyen-Rurenzangemero party, who was arrested by the police in Bujumbura on 9 December 2015, is still missing. His family paid 600,000 Burundian francs to persons presenting themselves as intelligence agents and offering to find him.

38. The context, characterized by numerous cases of disappearance and, frequently, the existence of one or more particular elements, such as the profile of the persons targeted — political opponents, members of civil society or "ex-FAB" — and threats made against the victims prior to their disappearance or subsequently received by their relatives in connection with their disappearance, affords reasonable grounds to fear enforced disappearances. In such cases, the authorities have an obligation to open an independent and effective investigation. For example, Savin Nahindavyi, an intelligence officer, disappeared on 1 May 2016; one of his superiors subsequently presented his condolences to the family but his body was never found. Several testimonies also suggest that intelligence agents or members of the police were involved in the disappearances of Marie-Claudette Kwizera, treasurer of the Ligue iteka human rights organization, on 10 December 2015; Jean Bigirimana, a journalist working for the Iwacu newspaper, on 22 July 2016; and Oscar Ntasano, a former senator and owner of the Nonara Hotel in Bujumbura, on 21 April 2017.

39. Identification of the bodies discovered and exhumation of bodies by the authorities might enable missing persons to be traced.

3. Right to liberty and security of person

40. The Commission found that the most frequently reported human rights violations consisted in arbitrary arrests and detentions, which, in many cases, led to other violations such as extrajudicial executions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence.

41. The arbitrary nature of the arrests is attributable to the fact that the persons making them, such as Imbonerakure, either were not authorized to do so or failed to respect the

procedures prescribed by law. Moreover, many victims were not informed of the reasons for their arrest.

42. The Commission is also concerned about draft amendments to the Criminal Code and the Code of Criminal Procedure which, in some cases, would enable criminal investigation officers to conduct searches without a warrant, including at night.

43. In many cases documented by the Commission, the persons arrested were taken to the National Intelligence Service or police cells and subjected to torture or ill-treatment before being released or transferred to prisons. Several testimonies referred to secret places of detention located, for example, within the headquarters of the National Intelligence Service in Bujumbura or in private houses or containers in different provinces, where detainees were deprived of any contact with the outside world.

44. Most of the detainees did not enjoy the safeguards prescribed by the International Covenant on Civil and Political Rights and by Burundian law, such as access to a lawyer and to medical care, the possibility of petitioning a court to rule on the legality of their detention, and the right to receive visits. Many victims were also detained in conditions that constituted cruel, inhuman or degrading treatment and for periods extending beyond the maximum allowable time of police custody, namely seven days renewable once only, which is already excessive.[20] The practice in regard to release is often random; publicity about an arrest, or acquaintance with a person within the State apparatus, can facilitate release. In many cases, exorbitant amounts of money have been demanded by members of the National Intelligence Service, the police, the judiciary or the Imbonerakure for the release of detainees or their transfer to prisons.

4. Torture and other cruel, inhuman or degrading treatment

45. The Commission has documented a persistent practice of torture and ill-treatment since April 2015. Numerous witnesses identified the headquarters of the National Intelligence Service, situated near Bujumbura Cathedral, as a place where such acts occurred, while others referred to a police detention centre known as "Chez Ndadaye", which was used mainly in 2015 by the Anti-Riot Brigade, among others. Several other detention centres run by the police and the National Intelligence Service in Bujumbura and other provinces, as well as some unofficial places of detention, were also mentioned.

46. The victims interviewed by the Commission mentioned recurrent methods of torture, including beatings with clubs, rifle butts, bayonets, iron bars, metal chains or electric cables, as a result of which some victims' bones were broken and other victims lost consciousness; long needles thrust into victims' bodies or unidentified substances injected into them; nails ripped out. Some victims were placed beside human remains or forced to eat faeces. Rapes were also committed and acts of torture inflicted on the genital organs of victims. Detainees were forced to witness executions, convinced that they would be the next victims. Acts of torture and ill-treatment were often accompanied by insults, including of an ethnic nature, and threats to kill the victims with firearms or grenades. In many cases these acts caused severe and enduring physical and psychological trauma.

47. Victims described conditions of detention that may constitute cruel, inhuman or degrading treatment, such as prison overcrowding, denial of adequate food and medical care, denial of access to toilet facilities, and failure to separate adults from minors as was the case at the National Intelligence Service in Bujumbura.

5. Sexual violence

48. Notwithstanding their fears of stigmatization, the Commission was able to interview more than 45 victims of sexual violence whose ages ranged from 8 to 71 at the time when the acts were committed. The real number of victims, mostly women but also a few men and children, is probably much higher. The most recent of these acts of sexual violence took place in 2017.

[20] The international norm is 48 hours.

49. Most of the cases documented by the Commission involved rape or attempted rape committed while police officers or members of the Imbonerakure, sometimes acting together, were in the process of arresting the victim's spouse or a male relative accused of belonging to an opposition party, taking part in demonstrations or refusing to join CNDD-FDD, although such crimes also occurred while the victims were at home alone. These acts were frequently accompanied by offensive gender-based, political and/or ethnic remarks. The Commission wishes to emphasize the extreme cruelty of some of these acts of violence. For example, a female minor was raped by three Imbonerakure wearing police uniforms beside the body of a relative whom they had killed. Two women were raped by several men, including Imbonerakure, who subsequently mutilated their genital organs. The Commission also heard the testimonies of women who had been raped by Imbonerakure or police officers at roadblocks or near the borders because they were attempting to flee.

50. Sexual violence has been used as a means of torture to obtain information or confessions from detainees. These acts include rape, forced nudity, infliction of severe wounds on, and injection of unknown substances into, male genital organs, and the hanging of weights on testicles. The Commission heard the testimony of a female victim of rapes, including gang rapes, committed over a period of four days, inter alia by police officers in a National Intelligence Service cell with a view to obtaining information.

51. Acts of sexual violence have left the victims with severe and enduring physical and psychological trauma. Women have contracted HIV, fallen pregnant or suffered miscarriages and several men are suffering from erectile, urinary and other problems.

6. Freedom of expression

52. The restrictions on freedom of expression noted since April 2015 have continued. In contrast to previous years when Burundi had a dynamic civil society and numerous independent media, the democratic space enabling journalists to express themselves freely has been severely restricted. The Government closed four private radio stations in April and May 2015, in some cases after they were destroyed by law enforcement units. Only one of these radio stations, Radio Isanganiro, has been authorized to resume broadcasting since February 2016.[21] In November 2016, the National Communications Council suspended one of the station's programmes because it broadcast a song entitled "Human rights for journalists". The Union burundaise des journalistes (Burundian Union of Journalists), which had denounced attacks on press freedom on numerous occasions, was suspended in October 2016. Many journalists remain in exile and international arrest warrants have been issued against some of them.

53. The Commission is concerned at instances of hate speech since April 2015. Such language, heard both in public speeches and in informal comments by Burundian authorities and leaders and members of CNDD-FDD, particularly Imbonerakure, is intended to intimidate and sometimes dehumanize opponents by equating them with animals. The use of terms such as "cockroaches" or "bugs" is disturbing, particularly as they were used in the past to refer to Tutsis, especially in Rwanda. Such speech perpetuates confusion between political opponents and that ethnic group.

54. A video circulated in April 2017 showed around a hundred Imbonerakure chanting a call to "impregnate female opponents so that they can give birth to Imbonerakure". Following condemnation by the United Nations High Commissioner for Human Rights,[22] the ruling party's National Secretary for Information and Communication promised sanctions against the culprits.[23] A "judicial file" has apparently been opened,[24] but the Commission has received no information concerning follow-up on that file.

[21] The Rema FM radio station, which is close to the ruling party, was also destroyed in May 2015. It resumed broadcasting in 2016.

[22] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21505&LangID=E.

[23] CNDD-FDD press release No. 0002-17-SNIC, 5 April 2017.

[24] Statement by the Permanent Representative of Burundi before the Human Rights Council, 15 June 2017.

notwithstanding the State's obligation to take action.[25] Moreover, Imbonerakure have made similar calls in various provinces.

7. Freedom of association and assembly

55. Freedom of association continues to be restricted. Only two of the civil society organizations, mostly working on human rights-related issues, which had been suspended or whose accounts had been frozen by the Government in the latter part of 2015 have been able to resume their activities in Burundi. On 19 October 2016, the Ministry of the Interior announced the revocation of the licences of the Association burundaise pour la protection des droits humains et des personnes détenues, the Forum pour le renforcement de la société civile, the Forum pour la conscience et le développement, Action des chrétiens pour l'abolition de la torture (ACAT Burundi) and the Réseau des citoyens probes. Five days later, the same Ministry suspended the licences of the Coalition de la société civile pour le monitoring électoral, the Coalition burundaise pour la Cour pénale internationale, SOS-Torture/Burundi (even though it was established abroad) and the Ligue Iteka. The latter's licence was revoked on 3 January 2017 after it published a report on the deteriorating human rights situation in Burundi. The heads of the Coalition de la société civile pour le monitoring électoral, the Forum pour le renforcement de la société civile, the Forum pour la conscience et le développement and ACAT Burundi have been under international arrest warrants since 2015.

56. The Commission is concerned at the promulgation in January 2017 of a law on Burundian non-profit organizations, and another on foreign non-governmental organizations, certain provisions of which considerably strengthen the authorities' control over the activities and resources of those entities.

57. Opposition parties cannot meet freely or carry out their activities in Burundi. Their members are under constant pressure to join the ruling party and many of them have been arrested, tortured or killed.

8. Freedom of movement

58. A number of persons have been arrested, ill-treated and, in certain instances, raped at roadblocks set up by police and Imbonerakure, or solely by Imbonerakure, near the borders, particularly with Rwanda and the United Republic of Tanzania. Others have been forced to pay large sums of money to police or Imbonerakure or have had their belongings taken. Some persons have been threatened, arrested or tortured for helping people to flee the country. Several members of the families of individuals who left the country have been threatened and some have been subjected to arbitrary arrest and detention or have been reported missing.

59. Some persons who have visited neighbouring countries, particularly Rwanda, have been arbitrarily arrested or tortured on their return to Burundi because the authorities allegedly accused them of collaborating with armed groups said to be based in those countries.

60. The Burundian authorities have taken measures that hamper freedom of movement, as exemplified by the "household record booklets" in which the head of each household is required to list all his dependants, as well as visitors. These booklets, which are inspected by the police during raids on homes, are allegedly intended to enable law enforcement officials to keep track of the population. In a general context of heightened surveillance by the authorities, this measure has the effect of discouraging professional or private travel.

9. Dysfunctions in the judiciary and other institutions

61. The Commission collected testimonies concerning undue pressure brought to bear on judges and prosecutors by their peers and also by members of the Government or the ruling party. Several lawyers have left the country, in some cases after receiving threats. According to the information available to the Commission, very few criminal proceedings

[25] Article 20, paragraph 2, of the International Covenant on Civil and Political Rights.

have been instituted against alleged perpetrators of human rights violations. The commissions of inquiry established by the Attorney General in the wake of the events of April 2015, the killing of nine persons in the Ngagara neighbourhood on 13 October 2015 and the events of 11 December 2015 did not act with impartiality, as demonstrated by their reports, which the Commission examined.

62. The Commission noted long delays in judicial proceedings, the holding of some sensitive trials on prison premises, which deterred observers from attending, and summary trials conducted pursuant to the "expedited" procedure, applicable to those allegedly caught in the act. By way of example, 1 police officer, 7 military personnel and 12 civilians who had been arrested in connection with the attack on the military camp at Mukoni (Muyinga Province) on the night of 23-24 January 2017 were tried without a lawyer on 26 January. The Muyinga provincial court sentenced them to heavy prison terms without regard to their claims that they had been tortured while in detention, to the point where some of the defendants were unable to stand during the trial.

63. The judiciary's lack of independence, which has long been observed in Burundi, has aggravated the impunity prevailing in the country. In August 2013, the first National Forum on the Justice System, the report of which has never been made public, emphasized the executive branch's influence over the National Judicial Service Commission, which is chaired by the Head of State and composed mainly of members appointed by the Government. The executive branch's ascendancy over the judicial branch is also apparent in the appointment of judges and the fact that they may be transferred, which runs counter to the principle of the irremovability of judges. The Ministry of Justice controls the promotion of judges and may propose their suspension or dismissal.

64. The Commission also noted the lack of independence of the national institutions for monitoring the authorities' actions in the field of human rights, namely the Independent National Human Rights Commission[26] and the Ombudsman, ever since the leaders and certain members of those institutions were replaced in 2015 and 2016.

III. International crimes

A. Crimes against humanity

1. Constituent elements of crimes

65. Article 7, paragraph 1, of the Rome Statute defines crimes against humanity as acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". Article 7, paragraph 2 (a), further stipulates that "'attack directed against any civilian population' means a course of conduct involving the multiple commission of acts […] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack". In the light of the information obtained, the Commission has reasonable grounds to believe that an attack against the civilian population has been taking place in Burundi since April 2015. That attack has consisted in the multiple commission of acts covered by the Rome Statute[27] against a largely civilian population consisting in particular of opponents of the Government or persons perceived as such.[28] The fact that members of the security forces are among the victims in no way changes that categorization.[29]

[26] In November 2016, the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions recommended that the Independent National Human Rights Commission should be downgraded to "B" status. The final decision is to be taken in 2017.

[27] See part II of the present report.

[28] See part II A of the present report.

[29] In *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, the International Criminal Tribunal for Rwanda ruled that the presence of certain non-civilians within the targeted population did not change the civilian character of that population.

66. The Rome Statute requires the existence of a State or organizational policy to commit the attack. However, in the case law of the International Criminal Court and other international criminal tribunals, that policy need not be of an official nature. In the *Blaškić* case, the International Tribunal for the Former Yugoslavia ruled that the intent to commit an attack need not necessarily be declared expressly or even stated clearly and precisely. It may be surmised from the occurrence of a series of events, including "the overall political background against which the criminal acts are set; […] the general content of a political programme, as it appears in the writings and speeches of its authors; […] the mobilization of armed forces; […] [and] the scale of the acts of violence perpetrated".[50] In the case of Burundi, the violations and abuses documented by the Commission are set against the background of a political crisis which began in April 2015, with the demonstrations against Pierre Nkurunziza's candidature in the presidential election, and intensified after the failed coup d'état in May 2015 and the use of violence by armed groups and unidentified persons against agents of the State and, in particular, against military camps on 11 December 2015. These acts led to a mobilization of the defence and security forces in order to repress any form of real or presumed opposition to the Government, and this continued into 2017. The hate speech aimed at opponents by authorities and representatives of CNDD-FDD at all levels is indicative of a general political will to suppress any dissenting opinion. Moreover, the International Criminal Court has ruled that, in exceptional circumstances, a State's policy may "be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack".[51] The fact that, generally, the alleged perpetrators of violations have not been prosecuted, or pressure has been brought to bear to prevent any prosecution, can be interpreted as a deliberate failure by the Burundian State to take action and, therefore, as encouragement on its part.

67. The Rome Statute stipulates that the attack must be "widespread or systematic", these two conditions not being cumulative. In the case of Burundi, the number of violations, their commission in several provinces and the multiplicity of victims, perpetrators and institutions involved point to the widespread nature of the attack. Its systematic nature can be inferred either from "an organized plan in furtherance of a common policy", which the Commission has reasonable grounds to believe in view of its observations in the preceding paragraph, or from "patterns of crimes" such that the latter constitute a "non-accidental repetition of similar criminal conduct on a regular basis",[52] the existence of which the Commission has documented.

68. Finally, the Rome Statute requires that the attack must have been carried out "with knowledge". In this regard, it is not necessary to prove that the perpetrator knew the details of the attack, since such knowledge may be deduced from "indirect evidence" such as the circumstances in which the attack occurred.[53] The Commission therefore believes, in the light of the information at its disposal, that the alleged perpetrators whom it was able to identify, most being members of the National Intelligence Service, the police, the army and the Imbonerakure, could not have been unaware of the background against which their acts were set, given their functions in the State's security apparatus or their indoctrination within CNDD-FDD.

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[50] *The Prosecutor v. Tihomir Blaškić*, judgment of 3 March 2000.

[51] International Criminal Court, *Elements of crimes*, p. 5, footnote 6. International Tribunal for the Former Yugoslavia, *Prosecutor v. Zoran Kupreškić et al.*, judgment of 14 January 2000.

[52] International Criminal Court, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, decision of 30 September 2008.

[53] International Tribunal for the Former Yugoslavia, *Prosecutor v. Dražen Erdemović a/k/a "Dražen"*, judgment of 7 May 1997, *The Prosecutor v. Tihomir Blaškić* and *Prosecutor v. Kunarac et al.*, judgment of 22 February 2001, International Criminal Tribunal for Rwanda, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, judgment of 21 May 1999, and International Criminal Court, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and *The Prosecutor v. Jean-Pierre Bemba Gombo*, decision of 15 June 2009. See also A/CN.4/680.

2. Types of crimes

69. The Commission, having established that the elements of crimes against humanity are present, examined the types of crimes committed in Burundi since April 2015. As a result, it has reasonable grounds to believe that the violations and infringements of the right to life that were perpetrated by agents of the State, particularly the extrajudicial executions and the deaths attributable to an excessive use of force by law enforcement agencies and Imbonerakure, may constitute "murders" under the Rome Statute.[34]

70. The Commission also finds that the many cases of arbitrary detention in National Intelligence Service and police cells and unofficial places of detention may constitute "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" under the Rome Statute.[35] Moreover, the violations frequently committed during detention, including the inhuman conditions in which detainees have been held, add to the gravity of these acts.

71. The actions of members of the security forces, sometimes assisted by Imbonerakure, which the Commission categorized as acts of torture and cruel, inhuman or degrading treatment constitute "torture" under the Rome Statute[36] insofar as they were systematically intended to inflict "severe physical or mental pain or suffering upon one or more persons" while such persons were "in the custody or under the control of the perpetrator".[37]

72. Cases of rape committed by police officers and/or Imbonerakure in the course of attacks on opponents or reprisals against female members of the families of opponents constitute "rape" under the Rome Statute.[38] The other cases of sexual violence, particularly in detention, documented by the Commission may constitute, under the Rome Statute, "any other form of sexual violence of comparable gravity", "torture" or "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".[39]

73. The various violations committed by agents of the State or Imbonerakure against members of opposition parties — particularly members of the Forces nationales de libération and the Mouvement pour la solidarité et la démocratie — or their relatives may also constitute crimes of "persecution" under the Rome Statute.[40] These crimes were politically motivated and the victims were targeted by reason of their real or presumed affiliation with opposition parties.[41] Furthermore, in certain cases of sexual violence, the targeting of women having family ties with political opponents may constitute gender-based persecution.

74. With regard to enforced disappearances, the Commission was able to establish, from the viewpoint of international human rights law, some cases of disappeared persons whose arrest or detention was confirmed by witnesses but whose disappearance was subsequently denied by the Burundian authorities.[42] However, at the current stage of its investigations, the Commission cannot reach the same conclusion from the viewpoint of international criminal law, under which the perpetrator of such arrest, detention or abduction must have been aware that it would be followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of the victim, or the perpetrator of a refusal to acknowledge the detention must have known that the victim was detained.[43] The Commission does not rule out the possibility that this element may be deduced from indirect evidence, such as a background characterized by arbitrary arrests and detentions, a climate of widespread persecution and the existence of particular facts such as threats

[34] Article 7, paragraph 1 (a).
[35] Article 7, paragraph 1 (e).
[36] Article 7, paragraph 1 (f).
[37] International Criminal Court, *Elements of crimes*, p. 7.
[38] Article 7, paragraph 1 (g).
[39] Article 7, paragraphs 1 (g), (f) and (k).
[40] Article 7, paragraph 1 (h).
[41] International Criminal Court, *Elements of crimes*, p. 10.
[42] See part II, C, 2 of the present report.
[43] International Criminal Court, *Elements of crimes*, p. 11.

preceding or following the disappearances. In the many cases in which, from the human rights viewpoint, the Commission only has reasonable grounds to fear that enforced disappearances have occurred, further evidence will need to be gathered within the framework of a more thorough investigation before these acts can be categorized as enforced disappearances under international criminal law.

B. Genocide

75. Although, within the context of certain violations such as arrests, torture and sexual violence, the Commission was able to show that Tutsis were targeted by insults of an ethnic nature, it is not in a position to establish the existence of a political will to destroy that ethnic group "in whole or in part", as required by the definition of genocide given in article 6 of the Rome Statute.

76. The Commission nevertheless remains concerned about certain speeches by State authorities and officials of the ruling party. Although such statements do not constitute direct and public incitement to commit genocide,[44] they help to create a dangerous climate of hate and to terrorize the population, and could rekindle ethnic tensions.

C. Individual responsibility

77. The Commission has reasonable grounds to believe that the above-mentioned crimes against humanity are attributable primarily to State officials at the highest level and to senior officers and members of the National Intelligence Service, the police, the army and the Imbonerakure.

78. The Commission has drawn up a non-exhaustive list of alleged perpetrators of crimes against humanity, accompanied by information concerning specific acts that they are suspected to have committed or ordered. It has made a distinction between direct responsibility and the responsibility of military commanders and superiors, as provided for in the Rome Statute.[45]

79. Given the need to respect the presumption of innocence and to protect victims and witnesses, the Commission has decided not to publish that list, which will be placed in the safekeeping of the United Nations High Commissioner for Human Rights. The latter may share it with any competent body and/or court conducting credible investigations or seeking to gather information on individuals or institutions pursuant to a United Nations mandate.

D. Accountability mechanisms

80. In view of the lack of independence of the Burundian judiciary and the impunity enjoyed in respect of the gross violations committed by agents of the State and members of the ruling party, including the Imbonerakure, the Commission believes that the Burundian State is neither willing nor able genuinely to investigate or prosecute those violations.[46] It therefore falls to the International Criminal Court to investigate those violations and establish criminal responsibility in respect thereof.

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[44] Article III of the Convention on the Prevention and Punishment of the Crime of Genocide and article 25, paragraph 3 (e), of the Rome Statute.

[45] Article 28 of the Rome Statute.

[46] Article 17, paragraph 1 (a), of the Rome Statute.

IV. Conclusions and recommendations

A. Main conclusions

81. **In the light of its investigations, the Commission finds that extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence have persisted in Burundi from April 2015 to the time when the present report was drafted.**

82. **The Commission has reasonable grounds to believe that several of these violations, committed mostly by members of the National Intelligence Service, the police, the army and the Imbonerakure, constitute crimes against humanity.**

83. **The Commission notes that the democratic space has been considerably reduced since 2015 and a climate of deep fear is affecting Burundians even in the countries to which they have fled. In the Commission's view, the risk that the refugees might be subjected to gross violations of human rights if they are sent back to Burundi necessitates strict respect for the principle of non-refoulement[47] on the part of the host countries.**

B. Recommendations

84. **On the basis of the above conclusions, the Commission recommends as follows:**

1. **The Burundian authorities should:**

85. **Put an immediate end to the gross human rights violations being committed by agents of the State and Imbonerakure over which the State exercises control;**

86. **Investigate these violations, ensure that their alleged perpetrators are prosecuted promptly in accordance with credible, independent and fair procedures and that the victims obtain just reparation and, where the alleged perpetrators are agents of the State, suspend them from their duties pending the completion of the investigation and the judicial proceedings;**

87. **Take practical measures to bring about a rapid improvement in the human rights situation, in particular by:**

- **Withdrawing the warrants for the arrest of heads of media outlets, civil society organizations and political parties who have neither used nor advocated violence, and permitting their safe return to Burundi;**
- **Lifting the suspension and reversing the revocation of the licences of media and civil society organizations, permitting them to resume their activities with complete independence and reviewing the laws adopted in 2017 concerning non-profit organizations and foreign non-governmental organizations;**
- **Immediately releasing all political prisoners;**
- **Ensuring that criminal investigation officers (*officiers de police judiciaire*) are not authorized to conduct searches without a warrant, including at night, as envisaged in the draft amendments to the Criminal Code and the Code of Criminal Procedure;**
- **Ensuring that individuals lacking legal authorization, particularly Imbonerakure, do not perform or participate in law enforcement activities, including in places of detention, and do not wear military or police uniforms or possess weapons;**
- **Prosecuting individuals who incite hatred or violence;**

[47] Article 33, paragraph 1, of the Convention relating to the Status of Refugees.

- **Putting an end to threats, intimidation and acts of extortion by agents of the State and Imbonerakure;**
- **Giving victims of sexual violence and torture access to medical and psychosocial services;**

88. Undertake a thorough reform of the judiciary;

89. Ensure that members of the defence and security forces respect human rights in all circumstances and serve the interests of the population as a whole, not solely those of the ruling party;

90. Reconsider their decision to withdraw from the Rome Statute, cooperate fully with the International Criminal Court in the ongoing preliminary examination and, if an investigation is initiated, continue that cooperation, inter alia by ensuring the protection of victims and witnesses;

91. Authorize the Office of the United Nations High Commissioner for Human Rights to resume its documentation of human rights violations in Burundi, which has been suspended since October 2016;

92. Sign and implement the memorandum of understanding with the African Union and permit the full deployment of 100 human rights observers and 100 military experts that was decided upon in 2016;

93. Cooperate with United Nations human rights mechanisms by once again receiving special procedures missions and implementing the recent recommendations of treaty bodies;

94. Actively seek a lasting solution to the political crisis, inter alia through international initiatives to promote dialogue.

2. Political parties and armed opposition groups should:

95. Put an immediate end to human rights abuses and acts of violence committed by their members;

96. Refrain from any incitement of violence and participate in the quest for a lasting solution to the political crisis in Burundi.

3. The Human Rights Council should:

97. Extend the Commission's mandate for a period of one year to enable it to conduct further and more thorough investigations in view of the persistence of gross human rights violations and abuses and the absence of other specific mechanisms capable of undertaking independent and thorough investigations into the human rights situation in Burundi;

98. Request the Office of the United Nations High Commissioner for Human Rights to report, at the forthcoming sessions of the Council, on the development of its cooperation with the Burundian Government.

4. The International Criminal Court should:

99. Initiate, as soon as possible, an investigation into the crimes committed in Burundi in the light of the conclusions contained in the present report and other information at its disposal.

5. The United Nations Security Council should:

100. Take due account of the Commission's conclusions, as well as the persistence of gross violations of human rights, in any discussion on Burundi and, in this context, ensure the effective implementation of resolution 2303 (2016);

101. Refer to the International Criminal Court any international crime that might be committed in Burundi after 27 October 2017;

102. **Impose individual sanctions on the principal alleged perpetrators of gross human rights violations and international crimes in Burundi.**

6. **The Secretary-General of the United Nations should:**

103. **Ensure that respect for human rights and restoration of the rule of law are among the priorities of his Special Envoy for Burundi;**

104. **Ensure that no alleged perpetrator of human rights violations or international crimes in Burundi is recruited for United Nations peacekeeping missions.**

7. **The States Members of the United Nations should:**

105. **Grant prima facie refugee status to Burundian asylum seekers and ensure strict respect for the principle of non-refoulement and refugee protection;**

106. **Prosecute, in accordance with the principle of universal jurisdiction, alleged perpetrators of international crimes committed in Burundi who are found to be in their territory;**

107. **Maintain, in the absence of any improvement in the human rights situation in Burundi, the individual sanctions and the suspension of direct aid to the Government;**

108. **Provide technical assistance, inter alia in respect of autopsies, exhumations and identification of bodies, to enable the Burundian authorities to conduct credible and independent investigations;**

109. **Support the establishment of specialized medical and psychosocial services, especially for victims of torture and sexual violence;**

110. **Support the Burundian authorities in any judicial and security sector reform endeavours that they might wish to undertake in order to improve the human rights situation.**

8. **The African Union should:**

111. **Retake the lead in seeking a lasting solution to the crisis in Burundi based on respect for human rights and rejection of impunity, as provided for in its Constitutive Act, and play an active role in that process;**

112. **Ensure that no agent of the Burundian State who is accused of human rights violations or international crimes is recruited for African Union peacekeeping missions;**

113. **Ensure that the full complement of African Union human rights observers and military experts is deployed rapidly in Burundi;**

114. **Consider, in the event that the current situation in Burundi persists, the application of article 4 (h) of the Constitutive Act of the African Union, under which it is authorized to intervene in a member State in certain circumstances, particularly in the event of crimes against humanity.**

9. **The East African Community should:**

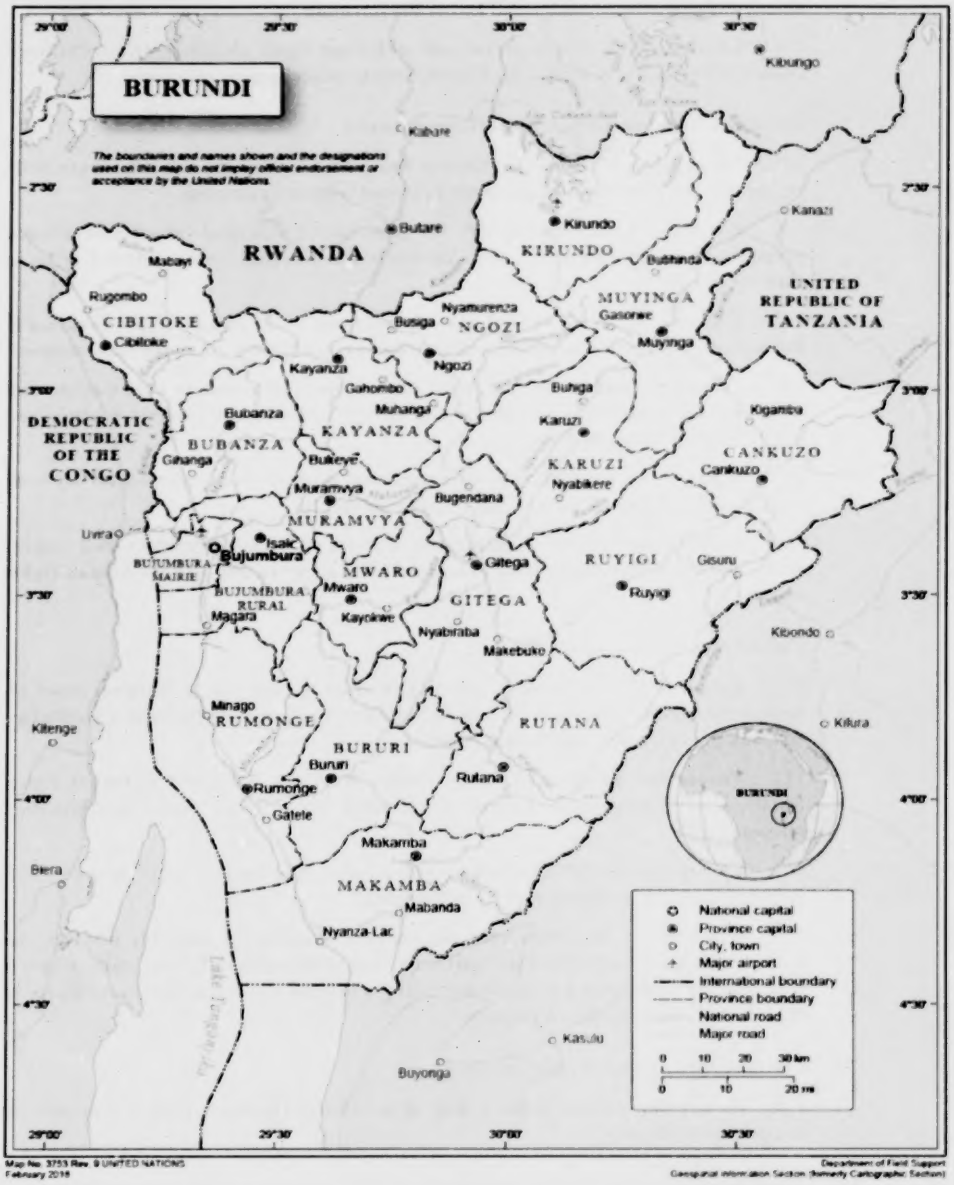
115. **Ensure that a rapid improvement of the human rights situation is a priority in its mediation efforts.**

10. **The guarantors of the Arusha Agreement of 2000, in their capacity as committed proponents of a lasting peace in Burundi, should:**

116. **Meet with a view to finding a lasting solution to the political and human rights crisis in Burundi.**

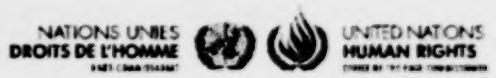
Annexes

I. Map of Burundi



II. Correspondence with the Government of Burundi

1. Note verbale sent to the Permanent Mission of Burundi on 20 December 2016



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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Commission d'enquête sur le Burundi

REFERENCE: BI/SCOI/BRI/NV/1

Le Haut-Commissariat des Nations Unies aux droits de l'homme à Genève présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève, et a l'honneur de l'informer que les membres de la Commission d'enquête sur le Burundi, nommés par le Conseil des droits de l'homme le 22 novembre 2016, seront à Genève du 23 au 27 janvier prochain.

L'objet de cette première réunion de travail des Commissaires sera de déterminer leurs termes de référence basés sur leur mandat, de s'accorder sur un plan d'enquête, sur les aspects méthodologiques de leur travail et sur leurs programmes de missions, en prenant en compte que la Commission devra notamment présenter une mise à jour orale aux 34ème et 35ème session du Conseil des droits de l'homme et un rapport final à la 36ème session de celui-ci.

Durant leur séjour à Genève, les Commissaires souhaiteraient également rencontrer les représentants des Etats membres du Conseil, et en premier lieu bien entendu celui du pays concerné, Son Excellence M. Rénovat Tabu, représentant permanent de la République du Burundi, de préférence le mercredi 25 ou le jeudi 26 janvier à l'heure qui lui conviendrait le mieux.

Le Haut-Commissariat des Nations Unies aux droits de l'homme saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 20 décembre 2016

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
Rue de Lausanne 44
1201 Genève
Fax: +41 22 732 77 34
Email : mission.burundi@bluewin.ch

2. Note verbale sent to the Permanent Mission of Burundi on 24 January 2017

NATIONS UNIES
DROITS DE L'HOMME

UNITED NATIONS
HUMAN RIGHTS

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Commission d'enquête sur le Burundi

Référence : 2017/COMMBURUNDI/2

Le Haut-Commissariat des Nations Unies aux droits de l'homme à Genève présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève, et, faisant suite à la note verbale envoyée le 20 décembre 2016, a l'honneur de lui rappeler que les membres de la Commission d'enquête sur le Burundi, nommés en vertu de la résolution du Conseil des droits de l'homme A/HRC/RES/33/24, sont à Genève du 23 au 27 janvier 2017.

Les commissaires, M. Fatsah Ouguergouz, Mme Reine Alapini Gansou et Mme Françoise Hampson, souhaiteraient rencontrer son H.E.M. Rénovat Tabu, représentant permanent de la République du Burundi, afin de discuter du mandat qui leur a été confié par le Conseil des droits de l'homme.

Le Haut-Commissariat des Nations Unies aux droits de l'homme saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 24 janvier 2017

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
Rue de Lausanne 44
1201 Genève
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3. Note verbale dated 26 January 2017 from the Permanent Mission of Burundi

AMBASSADE DE LA REPUBLIQUE DU BURUNDI EN SUISSE

MISSION PERMANENTE DE LA REPUBLIQUE DU BURUNDI A GENEVE

NOTE VERBALE

N°: 204.02 17/[illegible]/RE/2017

La Mission Permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres Organisations Internationales à Genève présente ses compliments au Haut Commissariat des Nations Unies aux Droits de l'Homme à Genève et a l'honneur de se référer à la Note Verbale 2017/COI/BRD/NV/2 l'informant que les membres de la Commission d'enquête sur le Burundi sont à Genève du 23 au 27 janvier 2017 et qu'ils souhaiteraient rencontrer Son Excellence Monsieur l'Ambassadeur, Représentant Permanent de la République du Burundi à Genève, pour porter à sa connaissance que le Gouvernement du Burundi a catégoriquement rejeté le rapport de l'EINUB pour des raisons dûment établies.

Le Gouvernement du Burundi a par conséquent rejeté la résolution A/HRC/RES/33/24 du Conseil des Droits de l'Homme imposée malgré sa demande de coopération et de négociations à laquelle les initiateurs ont réservé une fin de non recevoir.

Ainsi, comme le Burundi a rejeté cette résolution et tous ses corollaires, la Mission Permanente de la République du Burundi à Genève trouve infondé de rencontrer les membres de la Commission d'enquête sur le Burundi pour discuter du mandat qui leur a été confié par le conseil des Droits de l'Homme.

La Mission Permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres Organisations Internationales à Genève saisit cette occasion pour renouveler au Haut Commissariat des Nations Unies aux Droits de l'Homme à Genève, les assurances de sa haute considération.

Fait à Genève, le 26/01/2017

MISSION PERMANENTE DU BURUNDI GENEVE

HAUT COMMISSARIAT DES NATIONS UNIES AUX DROITS DE L'HOMME

GENEVE

41 Rue de Lausanne - 1201 genève - Tel: +41 (0) 22 732 77 05 - Fax: +41 (0) 22 732 77 54
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4. Note verbale sent to the Permanent Mission of Burundi on 6 February 2017, together with a letter addressed to the Burundian Minister for Foreign Affairs and International Cooperation

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HUMAN RIGHTS

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
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Commission d'enquête sur le Burundi

[illegible]

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la remercie de bien vouloir transmettre la lettre ci-jointe à Son Excellence Monsieur Alain Aimé Nyamitwe, Ministre des relations extérieures et de la coopération internationale de la République du Burundi, avec copie à Son Excellence Monsieur Martin Nivyabandi, Ministre des droits de la personne humaine, des affaires sociales et du genre de la République du Burundi.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 6 février 2017

HUMAN RIGHTS
UNITED NATIONS

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
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NATIONS UNIES
DROITS DE L'HOMME

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HUMAN RIGHTS

Commission d'enquête sur le Burundi

REFERENCE : [illegible]

Geneve, le 6 février 2017.

Excellence,

Nous vous adressons la presente lettre dans le cadre du mandat qui nous a été confié par la résolution 33/24 du Conseil des droits de l'homme établissant la Commission d'enquête sur le Burundi.

Nous avons à deux reprises cherché à rencontrer Son Excellence Monsieur Renovat Tabu, Représentant permanent de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève. Dans une lettre en date du 26 janvier 2017, Son Excellence Monsieur Tabu nous a fait part de son refus de nous rencontrer en raison du rejet par votre Gouvernement de la résolution 33/24.

Nous regrettons vivement cette décision que nous espérons ne pas être une position de principe de votre Gouvernement à l'égard de notre Commission. Comme vous le savez, la résolution 33/24 du Conseil des droits de l'homme nous a expressément chargé de « *dialoguer avec les autorités burundaises et toutes les autres parties prenantes (...) afin de fournir l'appui et les conseils nécessaires à l'amélioration immédiate de la situation des droits de l'homme et à la lutte contre l'impunité* ».

Par la présente lettre, nous tenons à vous assurer que nous envisageons notre mandat dans cette perspective de dialogue constructif et que nous tenons à prendre pleinement en compte vos observations et points de vue dans l'exécution de notre mandat. C'est dans cette optique que nous vous sollicitons, et à travers vous le Gouvernement que vous représentez, pour avoir accès au territoire du Burundi afin de dialoguer avec les autorités burundaises et mener à bien notre mandat d'investigation.

S.E.M. Alain Aimé Nyamitwe
Ministre des relations extérieures et de la coopération internationale
de la République du Burundi

La République du Burundi est membre du Conseil des droits de l'homme et se doit par conséquent de coopérer avec les mécanismes comme le nôtre, établis par cet organe. A cet égard, la résolution 33/24 demande « *instamment au Gouvernement burundais de coopérer pleinement avec la Commission d'enquête, de l'autoriser à effectuer des visites dans le pays et de lui fournir toutes les informations nécessaires à l'exécution de son mandat* ». Nous savons l'engagement exprimé à plusieurs reprises par votre Gouvernement à œuvrer en faveur de la promotion et la protection des droits de l'homme, nous espérons que cet engagement se concrétisera par une coopération avec notre Commission.

Quelle que soit votre décision, nous continuerons, dans un souci de transparence et d'impartialité, à vous tenir au courant de nos travaux. Nous invitons dès à présent les autorités burundaises à nous faire parvenir toutes les informations qu'elles jugeront nécessaires ou utiles à une appréciation objective de la situation des droits de l'homme au Burundi.

Nous vous remercions, Excellence, de l'attention que vous voudrez bien porter à notre requête et vous prions de croire à l'expression de nos sentiments distingués.

M. Fatsah Ouguergouz

Mme Reine Alapini Gansou

Mme Françoise Hampson

Cc

- S.E.M. Joaquin Alexander Maza Martelli, Président du Conseil des droits de l'homme
- M. Zeid Ra'ad Al Hussein, Haut-Commissaire des Nations Unies aux droits de l'homme
- S.E.M. Martin Nivyabandi, Ministre des droits de la personne humaine, des affaires sociales et du genre de la République du Burundi.

5. Note verbale sent to the Permanent Mission of Burundi on 13 March 2017

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Commission d'enquête sur le Burundi

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la remercie de bien vouloir trouver ci-jointe la présentation orale que M. Fatsah Ouguergouz, le Président de la Commission, va lire lors du dialogue interactif sur le Burundi prévu ce jour au Conseil des droits de l'homme.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

HUMAN RIGHTS
UNITED NATIONS

Genève, [illegible] 2017

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
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6. **Note verbale sent to the Permanent Mission of Burundi on 20 March 2017, together with a letter addressed to the Burundian Minister for Foreign Affairs and International Cooperation**

Unies Nations Nations Unies

COMMISSION D'ENQUÊTE SUR LE BURUNDI

[redacted]

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la prie de bien vouloir transmettre la lettre ci-jointe à Son Excellence Monsieur Alain Aimé Nyamitwe, Ministre des relations extérieures et de la coopération internationale de la République du Burundi, avec copie à Son Excellence M. Alain Guillaume Bunyoni, Ministre de la sécurité publique, et à Son Excellence Monsieur Martin Nivyabandi, Ministre des droits de la personne humaine, des affaires sociales et du genre.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 20 mars 2017

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
Rue de Lausanne 44
1201 Genève
Fax: +41 22 732 ** 34
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Nations Unies

COMMISSION D'ENQUÊTE SUR LE BURUNDI

Réf : 2017/COI/BRD/04

Genève, le 20 mars 2017

Excellence,

Suite à notre lettre du 9 février dernier dans laquelle nous vous exprimions notre volonté de maintenir un dialogue constructif avec le Gouvernement burundais, comme nous y invite la résolution 33/24 du Conseil des droits de l'homme créant notre Commission, nous prenons à nouveau contact avec vous afin d'obtenir de la part des autorités burundaises des informations qui pourraient nous aider dans notre travail.

Vous trouverez ci-joint une copie de nos termes de référence, qui précisent que nos enquêtes portent sur les violations des droits de l'homme et atteintes à ceux-ci commises depuis avril 2015 par toutes les parties au Burundi.

Dans un souci d'impartialité et d'objectivité, nous souhaiterions recevoir de la part des autorités burundaises votre information, utile à la compréhension de la situation des droits de l'homme au Burundi pendant la période couverte par notre mandat. Nous vous serions reconnaissants de bien vouloir nous faire parvenir des informations détaillées sur les atteintes aux droits de l'homme commises depuis avril 2015, notamment à l'encontre de membres du Gouvernement ou du Conseil national de défense de la démocratie – Forces pour la défense de la démocratie (CNDD-FDD), d'autorités administratives ou de membres des forces de défense et de sécurité burundaises, afin que nous puissions enquêter sur ces cas.

Nous souhaiterions également recevoir de votre part des informations portant sur d'éventuelles enquêtes ou poursuites judiciaires qui auraient été menées sur ces atteintes et sur leurs auteurs présumés. Par « atteintes aux droits de l'homme », nous entendons les exactions commises par des acteurs tant étatiques que non étatiques.

À notre connaissance, en effet, un certain nombre de membres du Gouvernement, du parti au pouvoir et des forces de défense et de sécurité burundaises ont été tués ou ont été victimes d'autres actes de violence depuis avril 2015.

S. E. M. Alain Aimé Nyamitwe
Ministre des relations extérieures et de la coopération internationale
de la République du Burundi

United Nations Nations Unies

COMMISSION D'ENQUÊTE SUR LE BURUNDI

Parmi les cas sur lesquels nous souhaiterions recevoir des informations de votre part, il y a notamment le meurtre du General Adolphe Nshimirimana, le 2 août 2015, l'attaque contre le General-major Prime Niyongabo, Chef d'Etat-major, le 11 septembre 2015, l'assassinat du Lieutenant-Colonel Darius Ikurakure, le 22 mars 2016, l'attaque contre le Ministre des droits humains, des affaires sociales et du genre, M. Martin Nivyabandi, le 24 avril 2016, l'attaque à l'encontre du Conseiller en communication du Président de la République, M. Willy Nyamitwe, le 28 novembre 2016, le meurtre du Ministre de l'eau, de l'environnement, de l'amenagement du territoire et de l'urbanisme, M. Emmanuel Niyonkuru, le 1er janvier 2017, ainsi que plusieurs attaques contre des representants du parti CNDD-FDD et des membres de la Police Nationale Burundaise commises depuis avril 2015 à Bujumbura et dans d'autres provinces.

Nous vous remercions par avance des informations que vous voudrez bien partager avec nous sur ces cas, ainsi que sur tout autre incident ou cas qui mériterait une attention de notre part.

La Commission d'enquête reste disponible pour rencontrer les autorités burundaises afin d'échanger sur cette demande d'information ainsi que sur son travail de manière plus générale.

Nous vous remercions, Excellence, de l'attention que vous voudrez bien porter à notre requête et vous prions de croire à l'expression de nos sentiments distingués.

M. Fatsah Ouguergouz

Mme Reine Alapini Gansou

Mme Françoise Hampson

Cc :

- S.E.M. Aimée Laurentine Kanyana, Ministre de la justice et Garde des sceaux de la République du Burundi
- S.E.M. Martin Nivyabandi, Ministre des droits humains, des affaires sociales et du genre de la République du Burundi
- S.E.M. Alain Guillaume Bunyoni, Ministre de la sécurité publique de la République du Burundi

United Nations A/HRC/36/55

General Assembly

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Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 4
Human rights situations that require the Council's attention

Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*

Summary

Violence throughout the Syrian Arab Republic continues to be waged in blatant violation of basic international humanitarian and human rights law principles, primarily affecting civilians countrywide. During the reporting period, warring parties continued to lay sieges and instrumentalized humanitarian aid in order to erode the viability of civilian support bases and compel surrender. Local truces in Fu'ah and Kafraya, northern Idlib, in Madaya, Damascus countryside, and in Barza, Qabun and Tishreen, eastern Damascus, incorporated evacuation agreements resulting in the forced displacement of civilians from those areas.

Terrorist groups Hay'at Tahrir al-Sham and Islamic State in Iraq and the Levant (ISIL), and armed group fighters targeted religious minorities through car and suicide bombings, the use of snipers and hostage-taking. Among the most vulnerable were internally displaced persons and children. Nowhere was this more evident than in Al-Rashidin, Aleppo, where a car bomb targeted displaced civilians from previously besieged Fu'ah and Kafraya — two predominantly Shia Muslim towns — killing 96 persons, including 68 children.

Government forces continued the pattern of using chemical weapons against civilians in opposition-held areas. In the gravest incident, the Syrian air force used sarin in Khan Shaykhun, Idlib, killing dozens, the majority of whom were women and children. In Idlib, Hamah, and eastern Ghouta, Damascus, Syrian forces used weaponized chlorine. Syrian and/or Russian forces continued to target hospitals and medical personnel.

The Commission is gravely concerned about the impact of international coalition air strikes on civilians. In Al-Jinah, Aleppo, forces of the United States of America failed to take all feasible precautions to protect civilians and civilian objects when attacking a mosque, in violation of international humanitarian law. In Ar-Raqqah, the ongoing Syrian Democratic Forces and international coalition offensive to repel ISIL has displaced over 190,000 persons, and coalition air strikes have reportedly resulted in significant numbers of civilians killed and injured. Investigations are ongoing.

* The annexes to the present report are circulated as received, in the language of submission only.

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I. Introduction

1. In the present report, submitted pursuant to Human Rights Council resolution 34/26, the Independent International Commission of Inquiry on the Syrian Arab Republic presents its findings based on investigations conducted from 1 March 2017 to 7 July 2017.[1]

2. The methodology employed by the Commission was based on best practices of commissions of inquiry and fact-finding missions.

3. The information contained herein is based on 339 interviews conducted in the region and from Geneva.

4. The Commission collected, reviewed and analysed satellite imagery, photographs, videos and medical records. Communications from non-governmental organizations and Governments were consulted, as were United Nations reports.

5. The standard of proof was met when the Commission obtained a reliable body of information to conclude that there were reasonable grounds to believe the incidents occurred as described, and that violations were committed by the warring party identified.

6. The Commission's investigations remain curtailed by the denial of access to the Syrian Arab Republic.

II. Political and military developments

7. During the reporting period, the pace of both political and military developments notably increased. As a result, two distinct dynamics emerged: one in the west of the country, under the de-escalation agreement concluded as part of the Astana talks on 4 May by its three guarantors (Iran (Islamic Republic of), the Russian Federation and Turkey), and the second in the central and eastern parts of the country, where Islamic State in Iraq and the Levant (ISIL) continues to rapidly lose significant swaths of territory. Levels of armed violence decreased in some locations under the de-escalation agreement, including in Idlib, western Aleppo and, more recently, in the southern province of Dar'a. The situation remains volatile, however, in the remaining two zones of eastern Damascus and northern Homs. Beyond the de-escalation zones, civilians, in particular internally displaced persons, in territories held or previously held by ISIL are witnessing increased violence as actors scramble to establish control over those areas.

8. In early July, a fifth round of talks was held in Astana to agree upon implementation modalities covering the de-escalation zones and upon monitoring mechanisms that could involve potential deployment, by the three guarantors, of police or military forces. While neither the Government of the Syrian Arab Republic nor the opposition signed the Astana agreement, the latter remain adamantly opposed to deployment of Iranian forces for monitoring purposes. Technical committees, formed as part of the agreement, continue to discuss the implementation and another round of discussions is expected in early August. During the next round, those modalities will need to be specified and implemented with support from the guarantors. Previous ceasefire agreements have demonstrated that a lack of enforcement mechanisms increases the likelihood of relapse towards prior levels of violence.

9. The Special Envoy of the Secretary-General for Syria, Staffan de Mistura, who attended the latest round of Astana talks, has stressed that the Astana and Geneva processes were "mutually supported actions" with the same aim of supporting ceasefire efforts. The Special Envoy held two rounds of talks in May and July. During the May round, the Government of the Syrian Arab Republic and the opposition agreed to discuss "four baskets" of issues, including political transition, constitutional reform, elections and combating terrorism. The latest round of intra-Syrian talks concluded in Geneva on 15 July. Despite persistent efforts by the Special Envoy, direct talks did not take place, and the rift

[1] The commissioners are Paulo Sérgio Pinheiro (Chair), Karen Koning AbuZayd and Carla Del Ponte.

in positions among parties remains wide. The Government of the Syrian Arab Republic insists on addressing the issue of combating terrorism before any discussion on transition takes place, while the opposition prioritizes discussing a political transition as stipulated in Security Council resolution 2254 (2015). An eighth round of Geneva talks is slated for September.

10. On 7 July, a ceasefire agreement was brokered between the Russian Federation and the United States of America covering the southern provinces of Dar'a, Qunaytirah and Suwayda'. The agreement is aimed at securing humanitarian access and includes a monitoring centre to record ceasefire breaches. Hostilities have already markedly decreased in these three governorates since the agreement took effect.

11. While the Astana and Geneva tracks have achieved some progress, a lack of effective enforcement mechanisms and an absence of a wider agreement on priorities within the larger political framework among parties render this progress tenuous. The Commission has consistently called for an inclusive political process and for a nationwide ceasefire beyond localized agreements.

12. Militarily, front lines in the western area of the Syrian Arab Republic, and particularly those around de-escalation zones in Dar'a, Idlib, eastern Damascus and northern Homs, have generally remained static. In northern Hamah, however, government forces and affiliated militias have, since April, intensified attempts to regain control of the "strategic triangle" area comprising Kafr Zeita, Murek and Al-Latamneh. Attempts to advance on the ground were accompanied by extensive air strikes on these locations, and also on adjacent southern Idlib, where the Khan Shaykhun chemical weapons attack occurred on 4 April.[2] Control over this triangle would result in forces of the Government of the Syrian Arab Republic and affiliated militias gaining a strategic foothold over armed groups in Idlib.

13. A combination of factors in Idlib, including increased concentrations of internally displaced persons and infighting among various armed groups, has placed the civilian population under substantially increased risk of violence. Episodes of infighting have markedly intensified over the past three months, pitting Hay'at Tahrir al-Sham, an umbrella of extremist factions led by the terrorist group Jabhat Fateh al-Sham (formerly known as Jabhat al-Nusra), against Ahrar al-Sham and other affiliates. Both coalitions have vied for control over parts of Idlib through direct clashes, kidnappings and assassinations. The two coalitions also compete to recruit new fighters into their ranks, including evacuees from previously besieged areas. Displaced civilian actors, including members of local councils and activists, also face increased threats and arrests, particularly by members of Hay'at Tahrir al-Sham, for their dissident activities. While air strikes in Idlib have decreased, the Commission remains extremely concerned about the internal situation in the governorate as the scope and intensity of infighting increases in areas where an estimated one million internally displaced persons subsist without adequate humanitarian assistance.

14. Moreover, the majority of internally displaced persons in areas controlled by the Government, armed groups or terrorists continue to face difficulties accessing humanitarian assistance due to a diversion of and lack of access to aid. In some areas, the impact of unilateral sanctions has further weakened the ability of humanitarian actors to deliver, owing to increased prices and reduction in the availability of crucial items in local markets.

15. In contrast to the western part of the country, front lines elsewhere have changed drastically over the past three months. Outside the de-escalation zones, the forces of the Government of the Syrian Arab Republic and affiliated militias deployed fighters to overtake vast swaths of territory from ISIL, namely in the centre and east of the country and, most notably, in Aleppo, Homs and Ar-Raqqah, and reaching the eastern edges of Dayr el-Zawr Governorate. Newly recaptured territory extends to strategic portions of the Iraqi-Syrian border. In this context, on 18 May and 6 June, air strikes by the United States

[2] In response to the chemical attack in Khan Shaykhun, on 7 April United States forces launched cruise missiles striking Sha'irat airbase, from which the United States claimed the aircraft that launched the attack had originated.

hit a convoy of pro-Government forces in the strategic Tanf region across the Jordanian and Iraqi borders, potentially escalating tensions in this highly contested area.

16. The past few months have also witnessed significant advances by the Syrian Democratic Forces against ISIL in Ar-Raqqah, the terrorist group's self-proclaimed capital city. The Syrian Democratic Forces, comprising Kurdish forces, namely the People's Protection Units (YPG), alongside affiliated groups, including the Free Syrian Army and tribal elements, have gained control over portions of Ar-Raqqah city and are effectively besieging it. Tens of thousands of civilians are reportedly trapped as street-to-street battles between the Syrian Democratic Forces and ISIL continue to intensify. Nearly 200,000 internally displaced persons have fled the city towards territory controlled by the Syrian Democratic Forces. The Commission is concerned about the fate of 50,000 to 60,000 civilians who remain trapped in Ar-Raqqah city.

17. While the de-escalation agreement in Astana has resulted in some reduction in violence, the Syrian conflict remains highly fragmented as distinct dynamics evolve in various parts of the country. The increasing involvement of external actors, while creating some opportunities for localized peace, also bears the seeds of discord as these actors have diametrically opposed objectives. These objectives are often connected to broader regional or international interests — far from the interests of the Syrian people, which should prevail in the process of ending the conflict and building peace.

III. Attacks against the civilian population

A. Sieges

18. Use of siege warfare has affected civilians more tragically than any other tactic employed by warring parties in the conflict. Presently over 600,000 Syrian men, women and children countrywide remain trapped in besieged locations, often in the most dire conditions. During the period under review, warring parties continued to lay siege to encircled communities and instrumentalize humanitarian aid deliveries to trapped civilians in order to compel surrender in Damascus, Rif Damascus, Dayr el-Zawr, Homs and Idlib Governorates. These sieges are characterized by the routine denial of delivery of vital foodstuffs, health items and other essential supplies to besieged enclaves, as well as indiscriminate attacks and deliberate attacks targeting civilian infrastructure, including hospitals, in order to erode the viability of life under the control of opposing sides. Such tactics result in the denial of the rights to freedom of movement, adequate food, access to education and access to health care, and, in many instances, the right to life.

19. Some sieges ended during the reporting period as a result of local truces that included evacuation agreements (discussed further below). For example, an agreement initially negotiated in September 2015, known as the Four Towns Agreement, was implemented beginning in April 2017, concerning Madaya and Zabadani, in Rif Damascus, and Fu'ah and Kafraya, in Idlib. Negotiations for the Four Towns Agreement took place with armed groups and under the aegis of third States, which assisted in brokering it. Similarly, in May, pro-Government officials and mediators on one side, and armed group members and/or local council representatives on the other, negotiated and implemented truces in Barza, Tishreen and Qabun, in eastern Damascus. Siege conditions endured by civilians in these localities are summarized in annex III, along with details on negotiations and stipulations within these agreements. All truces mentioned above have incorporated evacuation agreements, which has led to the forced displacement of thousands of civilians from those areas.

1. Government reconciliation

20. After hostilities fully ceased and truces were implemented in the four towns and in Barza, Tishreen and Qabun, pro-Government forces required certain individuals from the previously besieged areas to undergo a reconciliation process as a condition to remain, while others were not given the opportunity to reconcile. Legislative Decree No. 15 of July 2016 serves as the basis for reconciliation, and includes amnesty for all individuals who

turn themselves in and lay down their weapons, including fugitives. These individuals have generally included fighters and civilians wanted for defecting or deserting.

21. In effect, the reconciliation process allowed government forces to categorize populations on the basis of allegiance, by filtering fighting-age males, generally aged 18 to 45 years, into two categories: armed group members and wanted individuals who cannot stay in the locality and risk detention if they do, and those who agree to pledge loyalty to the Government. The latter group are permitted to stay but are forcibly conscripted into either local units under the umbrella of the National Defence Forces or into a paramilitary force, or sent to front lines as part of the Syrian army after a six-month notice period. In Barza, some fighting-age males were reportedly conscripted into a local unit called the "Nation's Castle" within 15 days.

22. Not all civilians were offered the option to reconcile, however. In Madaya, no reconciliation was offered to health-care personnel because of their medical work. Civilians able to remain in Madaya were required to fingerprint statements of loyalty to the Government, while others also underwent background checks. Similarly, in Barza, civilians explained that those unable to reconcile included members of the local council, relief workers, activists and family members of fighters. Civilians in Barza who were able to reconcile submitted to the same procedure as was implemented in Madaya. Civilians in these localities further spoke of lists of individuals who were not offered reconciliation due to their sympathy with opposition groups. As such, the reconciliation process has induced the displacement of both fighters and groups of dissident civilians in the form of organized evacuations.

2. Evacuation agreements and forced displacement

23. Agreements between pro-Government forces and armed groups concerning the four towns (brokered with the assistance of third States) and Barza, Tishreen and Qabun provided for the evacuations of set numbers of fighters and civilians. Parties to a non-international armed conflict may not order the displacement of the civilian population for reasons related to the conflict, unless the security of those civilians or imperative military reasons so demand.[3]

24. The exception based on the security of civilians would be justified, for example, to prevent civilians from being exposed to grave danger. Displacement for humanitarian reasons is not permissible where the humanitarian crisis causing the displacement, such as starvation, is the result of a warring party's own unlawful conduct.[4] Further, the humanitarian obligation to evacuate wounded and sick individuals from conflict areas exists at all times, and is therefore not limited to the period of evacuation under such agreements.[5] Similarly, the evacuation of civilians based on military necessity may not be justified by political motives.[6]

25. On 14 April, 60 buses carrying an estimated 2,350 people from Madaya departed for the Ramouseh garage area in Aleppo city, after which they were transported to Idlib. Simultaneously, 75 buses carrying 5,000 people from Fu'ah and Kafraya departed towards Al-Rashidin in western Aleppo city (see paras. 39-43 below). On 19 April, another 11 buses carrying fighters and civilians from Madaya, Zabadani and neighbouring areas departed for Idlib, rendering Zabadani completely depopulated. On the same day, another 3,000 fighters and civilians evacuated Fu'ah and Kafraya towards Al-Rashidin.

26. In eastern Damascus, three rounds of evacuations of fighters and civilians from Barza took place on 8, 12, and 20 May. In Tishreen, all fighters and civilians were

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[3] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, vol. I, *Rules*, rule 129 (b).

[4] See International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Milomir Stakić*, appeals judgment, IT-97-24-A, 22 March 2006, para. 287.

[5] ICRC, *Customary International Humanitarian Law*, rule 109.

[6] See ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva, 1987), para. 4854.

evacuated on 12 May. In Qabun, two main rounds of evacuations were organized: the first on 14 May, which comprised 70 buses, and a subsequent round of 80 buses. The latter evacuations were followed by smaller rounds, comprising 20 buses each, on 15 May. Approximately 6,000 fighters and civilians left Qabun. The terms of the local truce were communicated to civilians on 12 May, giving them only a few days to evacuate.

27. Government forces and armed groups have routinely denied humanitarian evacuations for wounded and sick civilians and fighters until surrender (truces) and subsequent evacuation, granting it only in rare instances when exchanges between the four towns were negotiated. Civilians in Qabun, for example, recalled using tunnels connecting Qabun to eastern Ghouta, Damascus, to evacuate the wounded, although infighting between rebel factions affected the regularity of tunnel access.

28. Civilians interviewed by the Commission echoed how their decision to evacuate previously besieged areas was involuntary in nature and that they had accepted to leave because they "had no choice". Women and children mostly followed their male heads of household. In Madaya, civilians emphasized that they did not want to abandon their land and property, but did not trust government forces enough to stay. Some women in Madaya, for example, described fear that their sons would be conscripted and a general distrust of government forces as their reasons for not reconciling. Other civilians recalled how the same fear that drove them to evacuate to Idlib also had an impact on their right to return. Those civilians feared reprisal violence or detention, noting they would not return to their homes even if given the option, with others having largely given up on the prospect. Still others had become aware that their homes had been looted or appropriated by pro-government forces.

29. Similarly, in Kafraya, interviewees described how siege conditions had forced them to evacuate despite their desire to remain. One interviewee recalled watching her children become increasingly malnourished, while another noted increased attacks and outbreaks of preventable illness that had pushed civilians to leave. Interviewees in Kafraya also expressed doubt concerning their ability to return to their homes following evacuations.

30. Often, local councils in opposition-held areas have entered into memorandums of understanding with armed groups in order to delineate responsibilities and affirm their capacities as elected officials of quasi-civil governance bodies. Despite this, neither political leaders, such as local council representatives, nor military commanders, such as pro-Government or armed group fighters, possess the requisite authority to consent to evacuation agreements on behalf of individual civilians.[7] Moreover, although some humanitarian organizations have participated in facilitating evacuations in varying capacities, including the Syrian Arab Red Crescent during the evacuations of Madaya and Tishreen, their participation does not render the underlying displacements lawful.[8]

31. By evacuating to the border of Idlib Governorate civilians, including doctors, relief workers, activists, civil society staff and local council members, who are, or who are perceived to be, sympathetic to opposition factions, government forces are able to serve a calculated warring strategy: population transfers in this context remove both opposition actors and their supporters to a single area in the northwest area of the Syrian Arab Republic. Only those civilians who are offered the chance to pledge loyalty to the Government in the form of reconciliation may remain in their homes. Overall, the pattern of evacuations occurring throughout the country appears intended to engineer changes to the political demographies of previously besieged enclaves, by redrawing and consolidating bases of political support.

32. As evinced by the 15 April attack on the convoy in Al-Rashidin (see paras. [illegible]-43 below), evacuations are perilous and desperate journeys. Civilians evacuated from Madaya, Barza, Tishreen and Qabun were only able to carry modest possessions with them, were not

[7] See International Tribunal for the Former Yugoslavia, *Prosecutor v. Mladen Naletilić, aka "Tuta" and Vinko Martinović, aka Štela*, trial judgment, IT-98-34-T, 31 March 2003, para. 523.

[8] See *Prosecutor v. Milomir Stakić*, appeals judgment, para. 286; see also *Prosecutor v. Milomir Stakić*, trial judgment, IT-97-24-T, 31 July 2003, para. 683.

evacuated to final destinations of their choice and were not provided with satisfactory conditions of shelter, hygiene, health, safety or nutrition either en route or once they reached Idlib.

33. Some of those displaced from Madaya and Barza were initially accommodated in schools in Idlib, which were ill-prepared to receive them. Others later moved to overcrowded camps for internally displaced persons, or to towns in the Idlib countryside described by an evacuee as "desperate". While civilians throughout Idlib Governorate continue to live under bombardment, suffer from a lack of aid and are exposed to the effects of increased armed group infighting (see para. 13 above), the final destinations of those transferred from Government-sympathetic Fu'ah and Kafraya were areas under Government control in Homs, Tartous and Latakia Governorates.

34. Additionally, the Government has reportedly implemented legislative measures to dispossess dissenting populations of their property, and has raised legal and administrative measures to impede displaced persons from registering or retaining private property. Recently issued presidential decrees require in-person registration and contestation of land titles countrywide. Requirements to register land titles or contest ownership in person would render it virtually impossible for many internally displaced persons and refugees to protect their properties. The use of such legal and administrative tools may also be intended to pressure certain populations to reconcile, so as not to lose their property. Such measures may have the opposite effect, however, by further disenfranchising significant segments of the population, and complicating future efforts towards conflict resolution and, ultimately, reconciliation.

35. For each civilian who was unable to freely decide on his or her movement or destination, the agreement to evacuate him or her amounts to an unlawful order. There is no indication that any of the evacuations satisfied the exceptions permitted on the basis of security of civilians or imperative military reasons. Therefore, the ordering of dissenting populations to evacuate Madaya and Barza, the general evacuation of Fu'ah and Kafraya, and the ordering of the entire civilian populations to evacuate Tishreen and Qabun constitute the war crime of forced displacement. The Commission has received conflicting information on the presence of civilians in Zabadani at the time of its evacuation.

B. Targeting and hostage-taking of religious minorities

36. Like government forces, armed groups have galvanized bases of support throughout the conflict, manifesting in heightened religious tensions and leading to violence with sectarian undertones carried out against civilians. The emergence of terrorist and extremist armed groups further fuelled such tensions. During the reporting period, terrorist and armed groups continued previously documented patterns of carrying out intentional attacks against civilians, many of them women and children, belonging to minority religious groups, and using other religious minorities as hostages.

37. On 11 March, at midday, two explosions detonated near the Bab al-Saghir cemetery, a well-known Shia pilgrimage site south of the old city of Damascus. The explosions detonated 10 minutes apart in the parking lot of the cemetery, where buses transporting pilgrims were parked. The first explosion was set off by a passing bus. As ambulances arrived and first responders tended to victims, a suicide bomber killed more pilgrims and several rescuers.

38. Overall, the two explosions killed 44 civilians, including 8 children, and injured another 120, leaving several women and children in critical condition. The majority of victims were Iraqi Shia pilgrims visiting Bab al-Saghir and the nearby Sayeda Zeinab shrine. Thirteen Syrians, mostly first responders, also died in the attack. The following day, Hay'at Tahrir al-Sham claimed responsibility for the attack, claiming it was targeting Iranian militias and government forces. The Commission found no evidence to substantiate the claim.

39. In the early hours of 14 April, evacuees from Fu'ah and Kafraya (see paras. 19 and 25 above), arrived in opposition-held Al-Rashidin on the outskirts of Government-held

western Aleppo city. They remained there the following day while warring parties worked out disagreements among themselves. Evacuees recalled fearfully boarding buses prior to leaving Fu'ah and Kafraya after armed group members fired shots that injured two women.

40. While waiting in Al-Rashidin, evacuees received very limited amounts of food so, when at around 3 p.m. someone began distributing snacks from a silver car, dozens of children gathered around the car. About a half an hour later, a blue pickup arrived and evacuees, mostly women and children, rushed to it believing it too would be bringing food. Instead, within seconds, the pickup exploded, killing at least 96 people, including 68 children and 13 women. Another 276 individuals were injured, including 42 children and 78 women, at least 1 of whom was pregnant. As people screamed and scattered around, some onlookers yelled sectarian insults at the Shia victims. A mother whose husband took their two sons to obtain food from the silver vehicle described rushing to the scene upon hearing the explosion, but she was forced by armed group fighters to return to the convoy. She subsequently learned that her 10-year-old son had died.

41. Although the vast majority of casualties were evacuees from Fu'ah and Kafraya, at least 10 armed group fighters were also killed in Al-Rashidin. Casualties were taken to hospitals in Bab al-Hawa, Idlib; Atareb, Aleppo; Aqrabat, Idlib; Saraqeb, Idlib; and Thawed al-Kennah, Aleppo. The remaining evacuees, however, were transported from Al-Rashidin to Jibreen, Aleppo, on the evening of 15 April, without knowing the whereabouts of their families. In Jibreen, evacuees provided the names of those missing to government authorities, and some of the injured have since been reunited with their families. At least 46 persons, including a 3-year-old boy, remain missing.

42. While a number of those missing are likely still hospitalized, at least one group of 17 Shia individuals, including elderly persons and children, were taken hostage by armed group fighters immediately after receiving treatment in makeshift hospitals in western Aleppo. Some hostages were released after prolonged negotiations involving the swap of a high-ranking armed group leader, but at least 15 others, including one 4-year-old child, remain in captivity.

43. No party has claimed responsibility for the attack in Al-Rashidin, and Hay'at Tahrir al-Sham and Ahrar al-Sham have explicitly denied involvement. While there is insufficient information from which to identify the perpetrator, there are significant indications to conclude the attack was carried out by armed group factions or fighters. Eyewitnesses reported seeing the blue pickup that detonated arrive from opposition-held territory, and the location of the convoy was under the control of a number of armed groups, including Nour al-Din al-Zenki (then part of Hay'at Tahrir al-Sham), Ahrar al-Sham and Free Syrian Army groups. Further, vehicle borne improvised explosive devices have primarily been a modus operandi of extremist factions and some armed groups throughout the conflict. In view of the high number of civilian casualties, particularly among children, it is clear that Shia civilians from Fu'ah and Kafraya were the object of the attack, amounting to the war crime of intentional attacks against civilians.

44. On 18 May, ISIL militants attacked the town of Aqarib al-Safiyah and attempted to attack nearby Al-Mardouja village in the Hamah countryside. Both areas were under Government control at the time, and located on the border of ISIL-held territory, close to Al-Salamyia — a strategic location for warring parties vying for control of Hamah. Aqarib al-Safiyah and Al-Mardouja are predominantly populated by Ismailis, a minority Shia Muslim community.

45. Residents of Aqarib al-Safiyah awoke at 4 a.m. on 18 May to the sound of gunshots. As they attempted to flee, many were killed in the streets by ISIL snipers positioned at the village's water reservoir and on the roofs of houses. At least two families were hiding in bedrooms when ISIL militants stormed their homes and shot them at close range; among the victims were a 4-month-old baby and an 11-year-old boy. In total, 52 civilians were killed, including 7 women and 12 children. Another 100 were injured, including 2 girls who suffered serious head wounds. The vast majority of victims were Ismaili Muslims. Survivors recalled being verbally insulted by ISIL fighters on account of their religious

beliefs. During a similar attack on Al-Mardoonja in 2015, ISIL militants killed up to 46 civilians, most of whom were also Ismaili Muslims.[*]

46. Earlier this year, a group of hostages held by armed groups in Douma, in the Damascus countryside, for over three years was released in exchange for armed group fighters detained by government forces. On 11 December 2013, various armed groups, including Jaysh al-Islam and Ajnad al-Sham (currently part of the Faylaq ar-Rahman coalition) stormed the town of Adra al-Omaliyah in eastern Damascus. Numerous Alawite families, including young children, in addition to some Ismaili, Shia, Druze and Christian families, were ordered by fighters to stay in the basements of their apartment complexes, where they remained in de facto detention. Later, armed group members entered the basements to inquire about the backgrounds of male family members, at which point some civilians were intimidated, verbally assaulted and derogatorily referred to as "nusairis" by the fighters. Some of the civilians were informed five or six months later by armed group emirs that they would be "distributed" to different armed group factions, as they were considered war booty.

47. At the next detention site, relocated hostages recounted how men were separated from women and children, although members of Ajnad al-Sham reunited families under their control "once or twice a month". Detained women described overhearing the brutal torture of male detainees. One Alawite woman who managed to escape the events of 11 December 2013 in Adra al-Omaliyah was contacted in August 2014 by an armed group representative who presented himself as the head of the "office of hostages". The man claimed that her husband had been moved to Douma and then facilitated contact between her and her husband. Over the course of the next two and half years, she was able to communicate briefly with her husband on five occasions via mobile telephone. On one occasion, her husband sent her a picture of himself, in which he appeared to be "half of his weight". Released hostages echoed that Faylaq ar-Rahman routinely denied them food and medical care.

48. Other hostages released in 2017 described how members of Ajnad al-Sham forced exhausted men to dig tunnels in besieged Douma for the groups to use as supply routes to eastern Ghouta (see para. 27 above). One woman recalled how her son was killed when government forces bombed out the tunnel he was digging in late August 2016. Some men were also forced to dig wells, while elderly men were exempt from labour. Up to 100 men from Adra al-Omaliyah belonging to minority religious groups remain in captivity as hostages, waiting to be swapped. Up to 175 women and children from Adra al-Omaliyah are still detained.

IV. Impact of the conflict on children

49. Children throughout the Syrian Arab Republic remain disproportionally vulnerable to violence and abuse. The overwhelming impact of the conflict on civilians during the reporting period revealed that children remain victimized on multiple grounds, and continue to be denied the protection to which they are entitled under the Convention on the Rights of the Child, to which the Syrian Arab Republic is party. Syrian children suffered as a consequence of attacks against civilians, lack of access to education, and their recruitment as child soldiers. For example, out of the 179 individuals killed during the chemical weapons attack in Khan Shaykhun and the suicide bombing in Al-Rashidin, 54 per cent of the deaths were of children.

50. On 7 March, at approximately 9.20 a.m., aerial bombardments carried out by pro-Government forces struck a primary school complex in Ataya, eastern Damascus, while classes were in session. Eight female students were injured, one in second grade who suffered head injuries. Less than one month later, on 2 April, the primary school was struck again, although no children were harmed. While the primary school is still standing, parents in Ataya now refuse to send their children to school fearing further air strikes. After the 4

[*] See A/HRC/30/69 and Corr.1, para. 128.

April were struck in Khan Shaykhun (see paras. 72-77 below and annex II), five schools were forced to shut down in the town, namely, Ahmad Talhan, Farouk al-Kang, Salh al-Dawadi, Adnan al-Malkwa and Tawasoum schools. Attacks against schools seriously violate the right to education and gravely undermine the future potential for Syrian children to participate fully in their communities.

91. The Commission continues to receive numerous allegations of children being recruited, placed in training camps and, in some cases, sent to active front lines. In March, for example, one 14-year-old boy joined the Syrian Democratic Forces in Tal Abyad, Ar-Raqqah, without the consent of his parents. He had approached a Syrian Democratic Forces recruitment centre in Tal Abyad voluntarily, was accepted by authorities of the Forces, and was killed in combat in early June in Ar-Raqqah countryside. Representatives of the Syrian Democratic Forces communicated the news of the boy's death to his family, but did not allow the family to bury him, instead burying him in a cemetery for "martyrs". Numerous accounts of ISIL militants recruiting, training and using children in Ar-Raqqah also continue to be received.

V. Attacks against protected objects

A. Places of worship

92. Beyond intentional attacks against religious minorities, incidental attacks against religious cultural property were carried out during the reporting period, undermining the ability of civilian communities to peacefully express their faiths. In one emblematic example, minutes before 7 p.m. on 16 March, a series of air strikes hit a building in a religious complex in Al-Jinah, killing 38 persons, including 1 woman and 5 boys. Three of the boys were aged between 6 and 11 years. 2 others were 17 years old. An additional 26 persons were injured, many of whom suffered from crushed limbs, head trauma and suffocation caused by structural collapse. First responders began a rescue operation immediately after the air strikes, and continued to retrieve bodies from under the rubble until the following morning.

93. Al-Jinah, a village in western Aleppo countryside that closely borders Idlib Governorate, is controlled by Hay'at Tahrir al-Sham, Ahrar al-Sham and a number of local Free Syrian Army groups, among others. On 16 March, the United States Central Command issued a statement announcing that "U.S. forces conducted an air strike on al-Qaeda (...) killing several terrorists" at a meeting location in Idlib.[10] It subsequently clarified that the statement referred to the Al-Jinah air strike. Over the following days, media outlets and non-governmental organizations reported that all casualties were civilians attending a religious lesson at the Omar Ibn al-Khattab mosque, although the Pentagon denied hitting a mosque or killing civilians. The mosque is located approximately 1.5 kilometres from the centre of Al-Jinah, between Al-Jinah and Ibeen. The air strikes were carried out by United States forces in their capacity as a member of the international coalition.

94. On 7 June, the United States Central Command presented a summary of its post-investigation findings on the incident, including interviews with "dozens of persons", but none were in Al-Jinah at the time of the attack.[11] It found that the strike killed one civilian, possibly a child, but noted it was proportional to a valid military objective, as it claimed to have struck a building, which was adjacent to a prayer hall, where an Al-Qaida meeting was taking place at which "regional leaders" were present.

[10] See www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/1121747/us-forces-strike-al-qaeda-in-syria.

[11] On 7 June, the United States Central Command issued a summary of its findings and conducted a closed-door briefing for journalists, which was widely reported on. Subsequently, a non-governmental organization posted an unofficial transcript of the briefing online that matched details reported in media.

55. The United States Central Command stated that F-15 aircraft had struck the building adjacent to the prayer hall with 10 bombs, that an MQ-9 drone had fired two missiles at targets who had emerged from the building, and that the weaponry chosen had been designed to avoid collateral damage. It added that the team had had information on the target three days prior to the attack but had not begun target planning until the day of the strike. It also acknowledged that the team had failed to identify the religious nature of the buildings, admitting that that had been a preventable error. Finally, it found irregularities in changeovers of teams on shift, which had "contributed to a lack of situational awareness, knowledge and understanding among the strike cell individuals".[12]

56. Investigations into events surrounding the air strikes were initially focused on establishing whether a lawful target existed. The Commission collected satellite imagery and photos taken of the site, which confirmed the assessment of the United States Central Command that the weaponry used was intended to avoid collateral damage. Based on bomb fragments found at the scene, the Commission determined that the affected structure had been hit by numerous aerial bombs. An assessment of fragments found at the site, photos, satellite imagery and witness testimony reveal that up to eight GBU-39s (guided bomb units) and other munition were used. While only GBU-39 fragments were found, based on crater depth it is likely that two 500-pound joint direct attack munitions, with delay fuses, were also used. Delay fusing is used to contain collateral effects, as the bomb would detonate underground, collapsing a structure while keeping blast and fragmentation localized.

57. The GBU-39, used to target specific parts of a building, is a low-yield bomb with minimal blast and fragmentation. It was used to destroy the target with minimal collateral damage to the surrounding area, including the adjacent prayer hall. A follow-on strike using two Hellfire missiles killed individuals fleeing the mosque. Indeed, Hellfire missile fragments were found outside the site, and fragmentation patterns on the road are consistent with a Hellfire missile containing a fragmentation sleeve around the warhead.

58. Omar Bin al-Khatab mosque is part of a larger religious complex, which includes a service building adjacent to a prayer hall used for religious gatherings. Interviewees described it as the largest mosque in Al-Jinah and surrounding villages, and well-known in the area. Witnesses further identified the service building as the one directly hit by the air strikes. Apart from meeting rooms, the service building contained a kitchen to prepare meals for worshippers, a dining area and bathrooms. Interviewees referred to the service building as part of the mosque, and indeed such buildings are essential to the functionality of mosques, which commonly serve as community education and social centres for worshippers.

59. Most of the residents of Al-Jinah, relatives of victims and first responders interviewed by the Commission stated that on the evening in question, a religious gathering was being hosted in the mosque's service building. This was a regular occurrence at the mosque attended by hundreds of congregants: every Thursday, worshippers gathered for sunset prayer, a religious lesson followed by nightly prayer, and a meal. The air strikes hit the service building at approximately 6.55 p.m., just as the religious lesson was concluding and the meal was being prepared. The nightly prayer was scheduled to begin 15 minutes later. Interviewees described how several air strikes hit the centre of the building, causing it to implode. With the exception of 2 survivors, all others, estimated to be at least 15, who were in the kitchen or bathrooms, were killed. As people attempted to flee through the western door, a drone fired two missiles, killing them in the streets.

60. In this instance, the service building was part of the mosque complex and was being used for religious purposes. Mosques are protected objects under international humanitarian law. Protected objects may not be made the object of attack unless used for military purposes, which would be the case if an Al-Qaida meeting, with regional leaders present, was in fact taking place. The United States Central Command has not released any details proving this was the case. Further, information gathered by the Commission does not support the claim that any such meeting was being held at that time. Interviewees described

[12] Ibid.

the gathering as strictly religious, and explained that most attendees were Al-Jinah residents, and that many of them were internally displaced persons, with the exception of some residents from neighbouring towns, such as Atarib.

61. Some interviewees, however, noted an Hay'at Tahrir al-Sham presence in the village, and it cannot be ruled out that some members of that group may have attended the gathering. In this regard, the Commission notes that even though bombs designed to inflict low collateral damage were used, the United States targeting team lacked an understanding of the actual target, including that it was part of a mosque where worshippers gathered to pray every Thursday. Moreover, although the targeting team had information on the target three days prior to the strike, it did not undertake additional verification of target activities in that period, which would be expected were it known to be a mosque. The Commission therefore concludes that United States forces failed to take all feasible precautions to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects, in violation of international humanitarian law.

B. Medical facilities

62. Since its inception, attacks against medical facilities and medical personnel have been a tragic hallmark of the Syrian conflict. In an attempt to protect health-care infrastructure, personnel and patients, many hospitals and clinics in areas under opposition control have relocated underground, operating from reinforced basements and, sometimes, from caves dug into mountains. "Cave hospitals" are typically located on the outskirts of Syrian towns, without any other buildings in their vicinity. While such measures are intended to afford additional protection, intentional attacks against underground and cave hospitals continue to transpire.

63. Between March and April, when Syrian and Russian forces heightened their aerial campaign to gain control of Kafr Zeita, Murek and Al-Latamneh, the only remaining towns in northern Hamah controlled by Hay'at Tahrir al-Sham and armed groups, a surge of air strikes on medical facilities in northern Hamah and southern Idlib were carried out. These attacks took place shortly before and after Syrian forces used chemical weapons in the same area (see paras. 69-70 and 72-77 below), thus preventing victims of chemical attacks from obtaining essential medical treatment. In one of the attacks, pro-Government forces used chlorine, while in another they used cluster incendiary munitions. The Commission has previously reported on pro-Government forces using such weapons to attack both medical facilities and individuals providing medical care in eastern Aleppo city.[11]

64. In the afternoon of 5 March, an air strike hit the Al-Sham underground hospital in Kafr Nabl, southern Idlib, destroying two floors and a generator and injuring one hospital worker. Interviewees recalled that the hospital had been rendered out of service as a result of an air strike on 25 February, noting that the number of civilian casualties would have otherwise been significantly higher. On 25 March, at approximately 1 p.m., a Syrian air force helicopter dropped a barrel bomb on Al-Latamneh hospital, killing three civilian men — a surgeon and two patients — and injuring a number of staff and patients. Photos of remnants provided to the Commission depict an improvised chlorine bomb. Eyewitnesses heard the bomb make only a slight noise before releasing a yellow/greenish smoke that smelled strongly of cleaning agents. The use of chlorine is further corroborated by symptoms reported: at least 32 persons were injured as a result of the attack, most of them suffering from irritated throats and eyes, difficulties breathing, vomiting and frothing of the mouth. One interviewee said that some of the injured were armed group fighters. In this regard, the Commission notes that the use of chemical weapons is prohibited in all circumstances, including when a military objective is present.

65. On 2 April, the Maarat al-Numan national hospital was struck by at least three delayed-fuse aerial bombs (see annex II, para. 15). Two days later, an air strike hit the Al-Rahma medical point in Khan Shaykhun (see annex II, paras. 17-18). A clinic in Heish,

[11] See A/HRC/34/64, paras. 33-35.

southern Idlib, was hit by air strikes on 7 April, and one eyewitness recalled seeing an airplane drop a bomb that released numerous smaller units, several of which hit the clinic's fuel generator and started a fire, forcing the clinic to relocate. Photos of remnants indicate that the clinic was hit with a ShOAB-0.5 cluster bomb and cluster incendiary bombs. On 22 April, at approximately 2 p.m., an air strike hit a cave hospital in Abdeen, southern Idlib, killing seven people, including a 6-month-old girl awaiting surgery. Her parents, a nurse and three patients were also killed. On 28 April, at around 4 p.m., an air strike hit a surgical and maternity hospital in Kafr Zeita, causing damage to the facility. The hospital was aerially attacked again at 2 a.m. on 29 April, directly affecting the emergency room and forcing the evacuation of all patients to the only remaining hospital in Kafr Zeita, located in a cave. Later that day, at around 2 p.m., a third air strike completely destroyed the facility, where, until then, over 100 babies had been delivered each month. Satellite imagery shows air strike damage to the hospital facility, likely from a 250-kilogram blast weapon, and indications of several near misses.

66. The number and frequency of attacks against health-care facilities, particularly repeated bombardments of the same facilities and routine lack of warnings, clearly indicate that pro-Government forces continue to intentionally target such facilities as part of a warring strategy, amounting to the war crime of deliberately attacking protected objects.[14] Deliberate attacks against health-care workers further constitute the war crime of intentionally attacking medical personnel. The 25 March attack on Al-Latamneh hospital with chlorine further violates the Chemical Weapons Convention. The Commission reiterates that the use of chemical weapons is prohibited under customary international humanitarian law regardless of the presence of a valid military target, including when used against enemy fighters, as the effects of such weapons are indiscriminate by nature and designed to cause superfluous injury and unnecessary suffering.

VI. Use of chemical weapons

67. Between March 2013 and March 2017, the Commission documented 25 incidents of chemical weapons use in the Syrian Arab Republic, of which 20 were perpetrated by government forces and used primarily against civilians.[15] During the reporting period, government forces further used chemical weapons against civilians in the town of Khan Shaykhun, in Al-Latamneh, located approximately 11 kilometres south of Khan Shaykhun, and in eastern Ghouta.

68. While Khan Shaykhun and Al-Latamneh are controlled by Hay'at Tahrir al-Sham, Ahrar-al-Sham and various Free Syrian Army groups, eastern Ghouta is primarily controlled by Jaish al-Islam and Faylaq al-Rahman. At the time of the use of chemical weapons in Khan Shaykhun and Al-Latamneh, Syrian and Russian forces were conducting an aerial campaign against Hay'at Tahrir al-Sham and armed groups in northern Hamah and southern Idlib.

69. At around 6.30 a.m. on 30 March — five days after the chlorine attack on Al-Latamneh hospital by Syrian forces (see para. 64 above) — an unidentified warplane dropped two bombs in an agricultural field south of Al-Latamneh village. Interviewees recalled how the first bomb made almost no sound but released a "toxic material" absent any particular smell, while the second bomb caused a loud explosion. As a result of the former, at least 85 people suffered from respiratory difficulties, loss of consciousness, red

[14] See A/HRC/27/60, paras. 109-111; A/HRC/33/55, paras. 42-65; and A/HRC/34/64, paras. 30-40. See also Independent International Commission of Inquiry on the Syrian Arab Republic, "Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016-28 February 2017", paras. 15-19. Available at www.ohchr.org/Documents/Countries/SY/A_HRC_34_CRP.3_E.docx.

[15] See A/HRC/23/58, paras. 136-140; A/HRC/27/60, paras. 115-118; A/HRC/28/69, paras. 15 and 43-4443; A/HRC/30/48 and Corr.1, para. 39; A/HRC/33/55, para. 30; and A/HRC/34/64, paras. 17, 34-35, 39 and 52-56. See also Independent International Commission of Inquiry on the Syrian Arab Republic, "Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016-28 February 2017", paras. 49-51.

eyes and impaired vision. Among the injured were 12 male farmers located 300 metres away from the impact point, 2 of them minors. Nine medical personnel who treated patients without protection also fell ill.

70. While the Commission is unable to identify the exact agent to which the victims of the 30 March incident were exposed, interviewees described certain symptoms, including a very low pulse in one case, and contracted pupils, suffocation, nausea and spasms in another, that indicate poisoning by a phosphor-organic chemical, such as a pesticide or a nerve agent. The absence of a characteristic chlorine odour, coupled with secondary intoxications among medical personnel treating victims, supports the conclusion that a toxic chemical other than chlorine was employed. Given that Syrian and Russian forces were conducting an aerial campaign in the area, the absence of indications that Russian forces have ever used chemical weapons in the Syrian Arab Republic,[16] and the repeated use of chemical weapons by the Syrian air force, there are reasonable grounds to conclude that the Syrian air force used chemical weapons in Al-Latamneh on 30 March.

71. As part of its offensive to fully besiege Barza, Tishreen and Qabun (see annex III, para. 3), three rockets were launched on the afternoon of 29 March from government forces positions into a residential area of central Qabun municipality, close to the Al-Hayat hospital, as well as into neighbouring Tishreen. One of the rockets released a white cloud in Qabun and witnesses recalled the spread of gas, which smelled strongly of domestic chlorine. Thirty-five persons were injured, including one woman and two children. Victims exhibited symptoms consistent with chlorine exposure, including respiratory difficulties, coughing and runny noses. The most serious cases were treated with hydrocortisone I and oxygen. On 7 April, shortly after midday, Al-Hayat hospital received two men suffering from milder manifestations of the same symptoms. In the first week of July, government forces used chlorine against Faylaq ar-Rahman fighters in Damascus on three occasions: on 1 July in Ayn Tarma, on 2 July in Zamalka and on 6 July in Jowbar. In total, 46 fighters suffered from red eyes, hypoxia, rhinorrhoea, spastic cough and bronchial secretions.

72. The gravest allegation of the use of chemical weapons by Syrian forces during the reporting period was in Khan Shaykhun. In the early morning of 4 April, public reports emerged that air strikes had released sarin in the town. Dozens of civilians were reported killed and hundreds more injured. Russian and Syrian officials denied that Syrian forces had used chemical weapons, explaining that air strikes conducted by Syrian forces at 11.30 a.m. that day had struck a terrorist chemical weapons depot.

73. To establish the facts surrounding these allegations, the Commission sent a note verbale on 7 April to the Permanent Representative of the Syrian Arab Republic to the United Nations Office at Geneva and specialized institutions in Switzerland requesting information from the Government. At the time of writing, no response has been received. The Commission conducted 43 interviews with eyewitnesses, victims, first responders and medical workers. It also collected satellite imagery,[17] photographs of bomb remnants, early warning reports and videos of the area allegedly affected by the air strikes. The Commission also took into account the findings of the Organisation for the Prohibition of Chemical Weapons report on the results of its fact-finding mission.[18] Below is a summary of the Commission's findings, elaborated in full in annex II.

74. Interviewees and early warning reports indicate that a Sukhoi 22 (Su-22) aircraft conducted four air strikes in Khan Shaykhun at around 6.45 a.m. Only Syrian forces operate such aircraft.[19] The Commission identified three conventional bombs, likely OFAB-100-120, and one chemical bomb. Eyewitnesses recalled that the latter bomb made less noise

[16] See A/HRC/34/64, para. 17.

[17] Satellite imagery analysis provided by the Operational Satellite Applications Programme. Available at www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx.

[18] Available at www.opcw.org/fileadmin/OPCW/Fact_Finding_Mission/s-1510-2017_e_.pdf.

[19] See Independent International Commission of Inquiry on the Syrian Arab Republic, "Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016-28 February 2017", para. 27.

and produced less smoke than the others. Photographs of weapon remnants depict a chemical aerial bomb of a type manufactured in the former Soviet Union.

75. The chemical bomb killed at least 83 persons, including 28 children and 23 women, and injured another 293 persons, including 103 children. On the basis of samples obtained during autopsies and from individuals undergoing treatment in a neighbouring country, those who undertook the fact-finding mission of the Organisation for the Prohibition of Chemical Weapons concluded that the victims had been exposed to sarin or a sarin-like substance. The extensive information independently collected by the Commission on symptoms suffered by victims is consistent with sarin exposure.

76. Interviewees denied the presence of a weapons depot near the impact point of the chemical bomb. The Commission notes that it is extremely unlikely that an air strike would release sarin potentially stored inside such a structure in amounts sufficient to explain the number of casualties recorded. First, if such a depot had been destroyed by an air strike, the explosion would have burnt off most of the agent inside the building or forced it into the rubble where it would have been absorbed, rather than released in significant amounts into the atmosphere. Second, the facility would still be heavily contaminated today, for which there is no evidence. Third, the scenario suggested by Russian and Syrian officials does not explain the timing of the appearance of victims — hours before the time Russian and Syrian officials gave for the strike.

77. In view of the above, the Commission finds that there are reasonable grounds to believe that Syrian forces attacked Khan Shaykhun with a sarin bomb at approximately 6.45 a.m. on 4 April, constituting the war crimes of using chemical weapons and indiscriminate attacks in a civilian inhabited area. The use of sarin by Syrian forces also violates the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and Security Council resolution 2118 (2013).

VII. Ongoing investigations

78. The Commission is gravely concerned about the protection of civilians in Ar-Raqqah Governorate, owing to the ongoing offensive by the Syrian Democratic Forces and the international coalition to repel ISIL from Ar-Raqqah city. While numerous neighbourhoods have been rapidly overtaken, over 190,000 civilians have been displaced to areas under the control of Syrian Democratic Forces in the north of Ar-Raqqah Governorate, where they reside primarily in the Ain Issa and Mabrouka camps. The camps lack the resources and capacity necessary to adequately care for those persons. The lives of up to 60,000 other civilians inside Ar-Raqqah city remain at considerable risk under daily air strikes. Protection concerns faced during the conduct of interviews remain an issue.

79. The Commission is currently undertaking investigations into several allegations of aerial attacks in Ar-Raqqah, including an air strike on Al-Mansoura village, at the time held by ISIL, which reportedly caused up to 200 civilian casualties. The Commission has gathered credible information that, on the night of 21 March, an air strike hit the Al-Badiya school in Al-Mansoura, which since 2012 had been used to house internally displaced persons. At the time of the strike, over 200 people, mostly displaced families from Palmyra, Homs, but also from Hamah and Aleppo, were living at the former school, which is located approximately 1.5 kilometres from the village. Some of the victims were recent arrivals, including from Maskanah, Aleppo, while other internally displaced persons had been living there for years. The strike was carried out at night when residents were asleep. Almost all of those inside the school at the time of the strike were killed, while some survivors, including women and children, sustained serious injuries. Information currently available indicates that at least two families of ISIL fighters had been living in the school previously, but left about one month before the strike.

80. After its offensive to take Manbij, Aleppo, from ISIL, the Syrian Democratic Forces required significant reinforcements to set the stage to retake Ar-Raqqah city. The need for increased "manpower" resulted in a surge in forced conscription of thousands of civilians,

predominantly men and boys, and was accompanied by arrests of those unwilling to be conscripted. Investigations are ongoing.

VIII. Conclusions

81. Civilians throughout the country continue to comprise the overwhelming majority of casualties in the Syrian conflict, while children and internally displaced persons remain among the most vulnerable to violence. The de-escalation agreement reached in Astana in May led to a discernible reduction in hostilities and, in turn, a reduction in civilian casualties, first in Idlib and western Aleppo, and more recently in the southern provinces of Dar'a, Qunaytirah and Suwayda'. While this reduction provides the basis for a broader ceasefire, implementation modalities must be promptly agreed upon and effectively applied; as demonstrated by previous ceasefire arrangements, delay in implementation undermines the sustainability of any such agreement and further risks placing civilians back in harm's way.

82. Across the Syrian Arab Republic, warring parties continued to lay sieges and instrumentalize humanitarian aid to compel surrender. Local truces in Fu'ah and Kafraya, in Madaya and Zabadani, and in Barza, Qabun and Tishreen have incorporated evacuation agreements that have resulted in the forced displacement of civilians from these areas.

83. Throughout the reporting period, Hay'at Tahrir al-Sham, ISIL and armed group fighters targeted religious minorities using car and suicide bombings, snipers and hostage-taking. In Al-Rashidin, a car bomb targeted internally displaced persons from the previously besieged Shia Muslim towns of Fu'ah and Kafraya, killing 96 persons, including 68 children. Following the attack, dozens of people went missing, with armed groups taking at least 17 civilians hostage.

84. Government forces used illegal chemical weapons on at least four occasions. In the gravest incident, the Syrian air force used sarin in Khan Shaykhun, killing dozens of civilians, the majority of whom were women and children. As the result of an aerial campaign by pro-Government forces in the area surrounding Khan Shaykhun, many medical facilities were destroyed, which compounded the suffering of victims of the sarin attack. In Idlib, Hamah and eastern Ghouta, Syrian forces also used weaponized chlorine.

85. In ISIL-held areas, civilians remain acutely vulnerable to violence. In Ar-Raqqah, the ongoing offensive by the Syrian Democratic Forces and the international coalition to repel ISIL has rapidly overtaken numerous neighbourhoods in Ar-Raqqah city. Air strikes have reportedly resulted in significant numbers of civilians killed and injured. The offensive has also displaced 190,000 persons, many of whom are now living in perilous conditions. Investigations are ongoing.

IX. Recommendations

86. In addition to the recommendations made below, the Commission reiterates the recommendations made in its previous reports.

87. The Commission recommends that all warring parties:

(a) Immediately lift all sieges and cease strategies aimed at compelling surrender that primarily affect civilians, including starvation and denial of access to humanitarian aid, food, water and medicine;

(b) Conduct evacuations from besieged areas in line with international humanitarian law and Security Council resolution 2328 (2016), which require that evacuations of civilians be voluntary and to final destinations of their choice, and protect all civilians evacuated, including by treating them with dignity and preventing fear of harm;

(c) **Refrain from future evacuation agreements that result in the forced displacement of civilian populations for political gains;**

(d) **Ensure adequate protection for all internally displaced persons and safeguard the right to return for internally displaced persons and refugees, including by guaranteeing their safety and property rights;**

(e) **Refrain from attacking cultural and historic sites when not used for military purposes and proactively assist in the safeguarding of such sites;**

(f) **Effectively ban the recruitment of children and their use in hostilities, and guarantee effective protection of child rights, including access to education;**

(g) **Take all feasible precautions to minimize harm to the civilian population when undertaking operations in civilian-populated areas, in particular during the offensive in Ar-Raqqah city and ISIL-controlled areas;**

(h) **Undertake investigations into the conduct of their forces and make their findings public.**

88. **The Commission recommends that the Government of the Syrian Arab Republic:**

(a) **Immediately cease using chemical weapons, including weaponized chlorine and sarin, which by design cause superfluous injury and unnecessary suffering;**

(b) **In accordance with its obligations under customary international humanitarian law and Security Council resolution 2286 (2016), cease attacks on medical facilities, personnel and transport;**

(c) **Ensure that existing and future legislation concerning legal and administrative matters for individual civilians, including in relation to property rights, complies with international human rights law, refugee law and international humanitarian law, and is equally accessible for all Syrians, with particular consideration for all internally displaced persons and refugees;**

(d) **Grant the Commission access to the country.**

89. **The Commission recommends that anti-Government armed groups:**

(a) **Comply with customary international humanitarian law and cease intentional attacks against civilians, including members of religious minorities;**

(b) **Refrain from kidnappings and hostage-taking, and conduct akin to enforced disappearance;**

(c) **Take urgent measures to discipline or dismiss individuals under their command responsible for such acts.**

90. **The Commission recommends that the international community:**

(a) **In compliance with their obligations to respect and ensure respect for the Geneva Conventions relating to the protection of victims of international armed conflicts, refrain from providing arms, funding or other forms of support to parties to the conflict when there is an expectation that such support may be used to perpetrate violations of international humanitarian law, and ratify treaties that promote respect for international humanitarian law and international human rights law when transferring arms, in particular the Arms Trade Treaty;**

(b) **Refrain from adopting or implementing any unilateral sanctions (unilateral coercive measures) that are unlawful and impede the full realization of human rights by the Syrian people, in compliance with General Assembly resolution 68/162 (2013), and ensure that any lawful sanctions are strictly tailored, with appropriate exemptions, to minimize their impact on humanitarian assistance;**

(c) **Encourage efforts to promote accountability, including by actively supporting the establishment of the International, Impartial and Independent**

Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, in accordance with General Assembly resolution 71/248;

91. **The Commission recommends that the Human Rights Council support the recommendations made, including by transmitting the present report to the Secretary-General for the attention of the Security Council in order that appropriate action may be taken, and through a formal reporting process to the General Assembly and to the Security Council.**

92. **The Commission recommends that the General Assembly support its recommendations and enable the Commission to offer regular briefings.**

93. **The Commission recommends that the Security Council:**

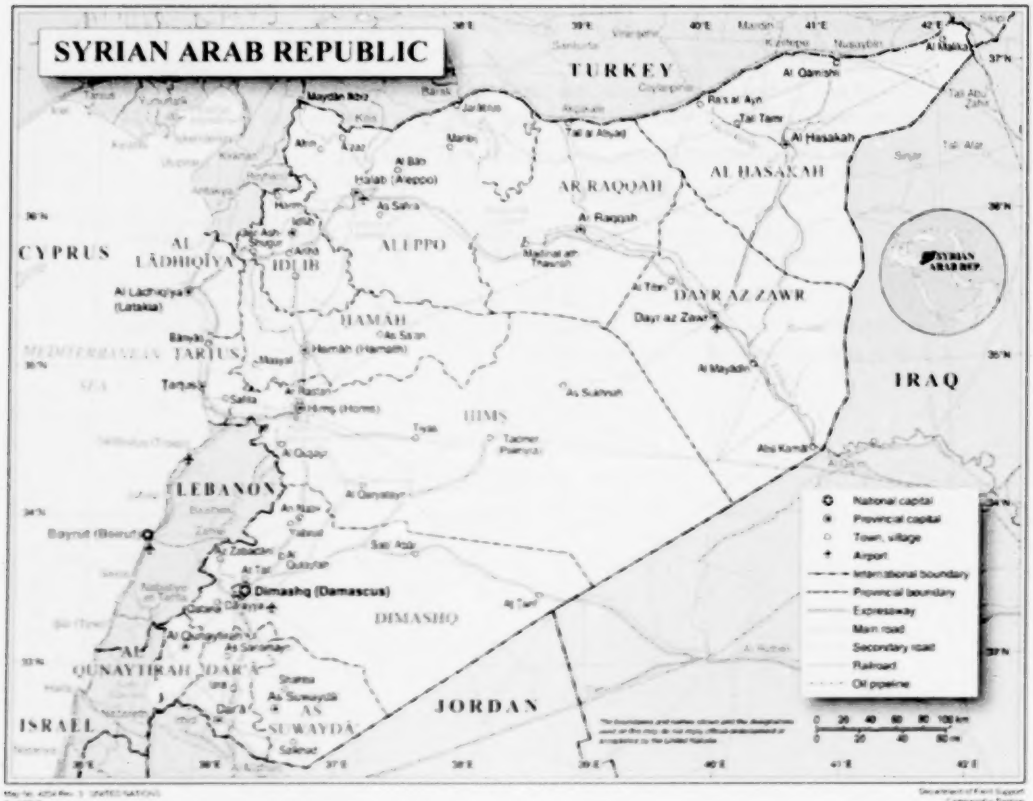
(a) **Support its recommendations;**

(b) **Include regular briefings by the Commission as part of the formal agenda of the Security Council;**

(c) **Use its influence with all relevant actors and stakeholders to ensure a comprehensive and all-inclusive peace process that maintains due respect for human rights and international humanitarian law.**

Annex I

Map of the Syrian Arab Republic



Annex II

Inquiry into allegations of chemical weapons used in Khan Shaykhun, Idlib, on 4 April 2017

I. Initial reports and allegations

1. On the morning of 4 April, public reports emerged that shortly after sunrise a series of airstrikes were launched on Khan Shaykhun, a town in southern Idlib which borders northern Hama. Khan Shaykhun is controlled by armed groups including Ahrar al-Sham and Hay'at Tahrir al-Sham (HTS), an umbrella coalition of extremist factions led by terrorist group Jabhat Fateh al-Sham (previously Jabhat al-Nusra). Throughout the day, news outlets and social media reported that dozens of civilians had died and hundreds of residents were suffering from symptoms consistent with exposure to sarin. The allegations would amount to the first sarin attack in the Syrian Arab Republic since 21 August 2013 when approximately 1,000 people were killed in Ghouta due to sarin exposure. Some hours later, between 11.30 and 1.30 p.m., the al-Rahma medical point and civil defence centre in Khan Shaykhun, which neighbour each other, were reportedly hit by airstrikes while treating patients of the alleged sarin attack. The al-Rahma medical point served as the main trauma facility in Khan Shaykhun.

II. Statements by Russian and Syrian authorities

2. During the course of the day on 4 April, Russian and Syrian authorities made public statements concerning the events in Khan Shaykhun. Both denied the involvement of Syrian forces in the alleged sarin attack suggesting instead that terrorist groups were responsible. The Ministry of Defence of the Russian Federation released a statement saying that the Syrian air force had struck a terrorist depot in Khan Shaykhun between 11.30 a.m. and 12.30 p.m., and that the depot included workshops where chemical warfare munitions were produced.[1] The Syrian Army issued a statement denying it had used chemical agents in Khan Shaykhun and that responsibility for the attack lied with militants.[2]

3. Syrian and Russian officials continued to make statements after 4 April. At a press conference on 6 April, the Syrian Minister of Foreign Affairs repeated the Russian Federation Ministry of Defence claim by saying that the Syrian "army attacked an arms depot belonging to Jabhat al-Nusra chemical weapons". He denied that Government forces had used chemical weapons instead explaining that the first airstrike carried out by Syrian forces in Khan Shaykhun on 4 April was at 11.30 a.m.[3] Subsequently, during an interview on 13 April, President Bashar al-Assad denied that the Syrian army had used sarin and said that the allegations were fabricated, noting "the West, mainly the United States, is hand-in-glove with the terrorists. They fabricated the whole story in order to have a pretext for the attack [on the Shayrat airbase]". He added that "[i]f they said that we launched the sarin attack from that airbase, what happened to the sarin when they attacked the depots?"[4], suggesting the Syrian army's deployment concept for sarin relied on the storage of the

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[1] Facebook post titled "Russian Defence Ministry comments on the destruction of a depot with terrorists' chemical weapons near Khan Sheikhun carried out by the Syrian aviation", posted by the Russian Federation Ministry of Defence on 4 April 2017, *available at* https://www.facebook.com/permalink.php?story_fbid=1903432043232876&id=1492252324550852.

[2] *Syrian Army rejects claims of chemical weapons use in Idlib, blames militants*, SPUTNIK NEWS, 4 April 2014, *available at* https://sputniknews.com/middleeast/201704041052292018-syrian-army-idlib-militants-chemical-weapons.

[3] *Live: Syrian FM Walid al-Moallem, holds press conference in Damascus*, YOUTUBE, video clip uploaded on 6 April 2017, *available at* https://www.youtube.com/watch?v=AcaF1vC8SPA.

[4] Statement in response to the United States airstrike of 7 April against the Shayrat airbase in Homs.

agent itself.[7] Finally, President al-Assad took the position that Khan Shaykhun is not a strategic area and that the Government does not have army or battles there.[8] On 2 May, the Russian Federation Ministry of Defence said that Soviet ammunition KHAB-250 was never exported outside of the USSR and was never filled with sarin.[9]

III. Methodology

4. To establish the facts surrounding these allegations, the Commission sent a note verbale on 7 April to the Permanent Representative of Syrian Arab Republic to the United Nations requesting information from the Government. At the time of writing, no response has been received. The Commission conducted 43 interviews with eyewitnesses, victims, first-responders, medical workers, and persons who visited the site after the attack. It also collected satellite imagery,[10] photographs of bomb remnants, early warning reports, videos of the area allegedly impacted by the airstrikes, and reviewed photographs and videos of victims depicting symptoms. The Commission took into account the findings of OPCW report on the results of its Fact-Finding Mission (OPCW FFM).[11] Taken as a whole, this body of information allowed the Commission to reach the narrative of events and findings below.

IV. Khan Shaykhun's location

5. Khan Shaykhun, a town controlled by armed groups and HTS, is located along the M5 highway. The M5, often described as the most important highway in Syria, connects the country's major cities including Damascus, Homs, Hama, and Aleppo, all of which are currently controlled by Government forces. Owing to its location, warring parties have fought for control over Khan Shaykhun since the early days of the conflict.

6. In March, the area was viewed as having increased strategic value as armed groups and HTS successfully attacked Government positions in Hama. Government forces reacted by carrying out a counter-offensive in southern Idlib, including in Khan Shaykhun, and the neighbouring towns of Kafr Zeita, Murek, and Al-Latamneh in northern Hama. If successful, this offensive would give Government forces control over the only pocket in northern Hama controlled by armed groups and HTS. Interviewees confirmed that in the days leading up to 4 April, numerous airstrikes impacted towns around the area of Khan Shaykhun. The Commission has also investigated and made findings on several incidents using airdropped munition which took place in the area in March and April, including through the use of chemical weapons in Al-Latamneh,[12] and attacks on hospitals in southern

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[7] Information published by the OPCW about the materials declared by the Syrian Arab Republic as part of its chemical weapons stockpile contradicts this statement. *See* OPCW documents EC-M-34/DEC.1 of 25 October 2013, EC-M-34/DEC.1, para. 2(a)(iii) of 15 November 2013, EC-M-36/DEC.4 of 17 December 2013.

[8] *AFP Interview President Assad on chemical attack*, YOUTUBE, 13 April 2017, *available at* https://www.youtube.com/watch?v=3WyVIhDgM9c. Transcript of the interview *available at* https://www.thepeninsulaqatar.com/article/13/04/2017/Transcript-of-exclusive-AFP-interview-with-Syrias-Assad-1

[9] Ministry of Defence: Ammunition HOB 250 has never been exported and were not filled with sarin, RUSSIAN REALITY, 2 May 2017, *available at* https://rusreality.com/2017/05/02/ministry-of-defence-ammunition-hub-250-has-never-exported-and-were-not-filled-with-sarin

[10] UNOSAT satellite imagery analysis uploaded on the webpage of the Commission at www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx.

[11] *OPCW Note by the Technical Secretariat, Report of the OPCW Fact-Finding Mission in Syria Regarding an Alleged Incident in Khan Shaykhun, Syrian Arab Republic*, April 2017 (hereinafter "OPCW FFM report"), S/1510/2017, 29 April 2017, *available at* https://www.opcw.org/fileadmin/OPCW/Fact_Finding_Mission/s-1510-2017_e_.pdf.

[12] A/HRC/36/55, paras. 69-70.

Idlib and northern Hama.[12] The latter severely impacted the level of medical care which victims of chemical attacks received.

V. The events of 4 April

7. On the morning of 4 April, the sky was clear. At 6.26 a.m., early warning observers[13] reported that two Sukhoi 22 (Su-22) aircraft had taken off from Shayrat airbase, at least one of which was heading in the direction of Khan Shaykhun. Shayrat is a military airbase in Homs located approximately 120 kilometres south of Khan Shaykhun, and has been used by the Syrian air force throughout the conflict to launch attacks on Homs and Hama. Since late 2015, it is also used as a base by Russian forces. The Commission notes that two individuals interviewed by the OPCW claimed that on the morning of 4 April the early warning system did not issue warnings until 11 to 11.30 a.m., and that no aircraft were observed until that time.[14] The Commission has not gathered any information to support this claim, but rather the opposite, as detailed below. Eyewitnesses explained seeing a plane over Khan Shaykhun at around 6.45 a.m., and numerous interviewees recalled hearing messages from the early warning system 20 minutes prior to the strikes. As further examined below (paras. 17-18), 11.30 a.m. was the time when the al-Rahma medical point in Khan Shaykhun was attacked by airstrikes including cluster incendiary munitions, though not chemical weapons.

8. At around 6.45 a.m., interviewees recalled seeing an aircraft flying low over Khan Shaykhun, which is consistent with the airspeed of the aircraft and the distance that needed to be covered. In the span of a few minutes, the aircraft, identified by interviewees as a Su-22, made two passes over the town and dropped four bombs. The Su-22 is easy to recognise, and difficult to mistake for anything else. Recognition features include a single vertical stabilizer, swing-wings, and flat intake mounted in the nose.[15] Satellite imagery, photographs, and video footage corroborate witness accounts that air delivered munitions hit the impact points of the four bombs. As previously found by the Commission, only the Syrian air force uses Su-22s,[16] an aircraft which has no night-time capability. The Russian Federation and the international coalition do not operate this type of aircraft. It is therefore concluded that the Syrian air force carried out airstrikes on Khan Shaykhun at around 6.45 a.m. on 4 April.

9. Three of the bombs created loud explosions, causing damage to buildings though apparently only one casualty. Based on crater analysis and satellite imagery, the Commission was able to identify three conventional bombs, likely OFAB-100-120, and the remaining a chemical bomb. The chemical bomb landed in the middle of a street in a northern neighbourhood of Khan Shaykhun, approximately 150 meters from al-Yousef park, close to a bakery and a grain silo, which interviewees explained was not operational and unused for any purpose after having been hit by an airstrike in 2016. Eyewitnesses further recalled how this bomb made less noise and produced less smoke than the other three bombs, which is confirmed by video footage of the attack. Photographs of the impact site show a hole, too small to be considered a crater, and the remnants of what appears to have been a Soviet-era chemical bomb. The small hole is indicative of a weapon which used a contact fuze and small burster to deploy chemical agents, with the kinetic energy of the bomb's body creating most of the hole. Two parts of the bomb were found at the site, a large piece of the weapon body marked in green for chemical payload and a filler cap for chemical weapons. Although the Commission is unable to determine the exact type of chemical bomb used, the parts are consistent with sarin bombs produced by the former Soviet Union in the 250kg-class of bombs, which would have approximately 40kg of sarin, depending on the munition used.

[12] A/HRC/36/55, paras. 63-65.
[13] Early warning observers comprise civilians who monitor aircraft flights to provide other civilians with advance warning prior to an airstrike.
[14] OPCW FFM report, paras. 5.27-5.29.
[15] A/HRC/34/CRP.3, para. 26.
[16] A/HRC/34/CRP.3, para. 27.

10. The weather conditions at 6.45 a.m. of 4 April were ideal for delivering a chemical weapon. Data based on historical weather forecasts indicates that the wind speed was just over three kilometres per hour from the southeast, that there was no rain and practically no cloud cover, and that the temperature was around 13 degree Celsius.[16] The OPCW FFM, in the absence of actual weather data recorded for Khan Shaykhun and instead relying on actual weather data recorded at three other locations in the area, concluded that the wind speed was low with uncertain direction, most likely coming from somewhere between the south and east. All available data indicates stable atmospheric conditions without significant turbulence. Under such conditions, the agent cloud would have drifted slowly downhill following the terrain features at the location (roads and open spaces), in a southerly and westerly direction. This is consistent with the observed locational pattern of individuals becoming affected by the agent cloud.

11. The chemical bomb released a cloud which spread over a distance between 800 and 600 metres from the impact point and killed at least 83 persons, including 28 children and 21 women. One interviewee said that most of those severely affected, including many who died, were within 200 metres to the south and west from the impact point of the bomb, while most of the ones less seriously injured were further away. Many of the deceased victims were buried in Khan Shaykhun.

12. Some of the victims died in bed and their bodies were not found until later on 4 April. A single mother who was out farming returned home to find all but four children dead. The body of one orphaned girl was found the following day. Also on 5 April, one interviewee found the body of a woman and her six children in a basement, where they had apparently tried to take shelter from the gas released by the chemical bomb. Another interviewee described how, on the way to his family's home, he witnessed people dying in the street and children desperately crying for the help of their parents. When he arrived at the house, he found his niece dead and his two sisters struggling to breathe. He lost consciousness shortly afterwards and woke up in hospital where he learned his sisters had died. In total, 291 persons, including 103 children, were injured. Medical practitioners expressed particular concern over parturient women and the effects that the toxic agent posed to their unborn babies. A lack of access to adequate medical equipment however prevented doctors from establishing whether foetuses were affected.

13. Upon learning of the airstrikes, civil defence teams from Khan Shaykhun and from neighbouring Hizah went on location to assist in rescue efforts. They were unaware at the time of the possibility of the release of a chemical agent so they did not carry respirators or other protective equipment. Several fell ill upon arrival to the scene, and at least two died. When they realized a chemical agent may have been present, rescuers warned incoming teams of first-responders who carried respirators with them. Some of these using respirators reported that, despite this protection, they too felt affected by the gas. First-responders removed the clothes from victims, washed them with water, and provided them with oxygen masks. Several medical workers said that first-responders may have inadvertently exposed victims to additional quantities of sarin by removing the clothes on their upper bodies over their mask instead of cutting them off. By removing their clothes this way, victims would have inhaled sarin as the clothes passed by their mouths and noses.

14. After washing the victims, first-responders used ambulances, cars, and motorbikes to transport victims to several medical facilities in the area, with the al-Rahma medical point in Khan Shaykhun receiving approximately 80 victims. Others were taken to the al-Salam and al-Bashir state hospitals in Maaret al-Numaan, the Qilo hospital in Saraqeb, and hospitals and clinics in Aracha, Ma'aret Misrin, Jarjnaz, Maar Shurin, Abdeen, Tal Minnes, Kafr Nabel, Binnish, Idlib city, Adnan Kawam, Hass, and Bab al-Hawa. Overall, these facilities were ill-equipped to deal with victims of chemical attacks other than chlorine — an issue compounded by the large number of victims and the severity of the symptoms from which they suffered.

[16] See, e.g., Khan Shaykhun, Idlib Historical Weather Terms, *available at* [redacted].

15. Moreover, just one and a half days before the attack, on the evening of 2 April, Syrian and/or Russian forces carried out airstrikes which directly hit the Maarat al-Numan National Hospital, using at least three delayed fuse aerial bombs. The attacks against the hospital destroyed its upper floors where the inpatients' room and intensive care unit were located. Most of the hospital's equipment, including incubators, were also destroyed. The Maarat al-Numan hospital, located 24 kilometres north of Khan Shaykhun, is described by medical staff as the main hospital in the area and the one which could have more adequately dealt with cases of patients exposed to chemical agents. Before the strikes, it employed 300 staff including 20 doctors and over 100 nurses, some of which had received training on treating victims of chemical agents and who subsequently trained their colleagues. The hospital also contained large stocks of atropine, hydrocortisone, diazepam, and oxygen concentrators. As a result of the airstrike, the hospital could only treat some 15 victims of the 4 April chemical attack. One victim who was seriously injured by the gas released by the chemical bomb noted that first-responders took him to Maarat al-Numan National Hospital because they were unaware the hospital had been struck two days earlier. The hospital was unable to treat him, and he was subsequently transferred to another hospital.

16. Depending on what the healthcare facilities had available on 4 April, victims of the sarin attack were given atropine to help reactivate their heartrates, and pralidoxime to reverse chemical poisoning, though several medical staff reported that most hospitals did not have the latter or only had it in small quantities. Doctors noted that most of the existing pralidoxime had expired because, after the 2013 attack in Ghouta and the subsequent removal and destruction of Syria's chemical weapons by the Joint Mission of the United Nations and the OPCW in 2013 and 2014, it was announced that chemical weapons such as sarin no longer existed in Syria. For these reasons, hospitals ceased planning for these types of attack. In the absence of alternatives, doctors administered the expired pralidoxime to patients. Owing to the high number of casualties, several hospitals ran out of atropine and requested other medical facilities to provide them with additional medication. To help them breathe, many of the victims were intubated and, where available, placed in respirators. At least 31 persons were taken from medical facilities in the Syrian Arab Republic to hospitals in a neighbouring country, where at least three subsequently succumbed to their injuries and passed away. Several medical workers noted that the combination of lack of appropriate and sufficient medication, overall shortage of staff, extremely reduced capability of Maarat al-Numan National Hospital, and consequent need to take patients to more distant healthcare facilities all contributed to the overall high number of fatalities.

17. Al-Rahma medical point and the neighbouring civil defence centre operate from caves in the mountains, located approximately two kilometres from the centre of Khan Shaykhun. Rescuers took many of the victims directly from the area affected to al-Rahma where at least 25 persons died. Several interviewees explained that al-Rahma was not prepared to treat victims of chemical attacks but that patients were only taken there because it was the closest medical facility. Throughout the morning of 4 April, after the 6.45 a.m. airstrikes, interviewees saw drones over the skies in Khan Shaykhun and between 11.30 a.m. and 1.30 p.m., a series of airstrikes directly impacted the medical point and the civil defence centre, which were treating patients of the chemical attack. Airstrikes in Khan Shaykhun were reported until 4.00 p.m. Eyewitnesses further noted that the airstrikes which struck al-Rahma were conducted by jetfighters. As a result of the attack, the al-Rahma medical point was forced to transfer all intensive care patients to other hospitals without ventilators. Due to the lack of sufficient ambulances, many patients were transferred in civilian vehicles.

18. Interviewees further detailed that the medical point was struck at least three times over the span of a few minutes. One of the strikes destroyed the only external building of the medical point and several ambulances. Another strike hit the hospital's upper floor and its warehouse destroying some equipment. Though there were no fatalities from the attack, some medical staff and patients sustained minor injuries. Photographs provided to the Commission show the main building and surrounding area were struck by aerial bombs. The building sustained a direct hit from at least one blast weapon and several shallow craters pockmark the site. Additionally, burned out remnants of what appear to be ZAB 2.5SM aerial incendiary munitions were found in scorched grasses dotting the area. In view of the fact that the Commission has previously documented Syrian and/or Russian air

forces having used cluster incendiary munitions,[17] that international coalition forces do not use these type of munitions, and that Russian and Syrian officials acknowledged that at the time of the strike, between 11.30 a.m. and 13.30 p.m., the Syrian air force conducted airstrikes in Khan Shaykhun, the Commission finds that there are reasonable grounds to believe that either Syrian and/or Russian forces conducted the airstrike against the al-Rahma medical point.

VI. The use of sarin

19. Sarin is a synthetic, odourless liquid nerve agent which can be dispersed in air as an aerosol. Upon release, the agent cloud drifts with the wind as well as following terrain features. Unprotected humans will experience both external contamination (skin, hair, clothing), and absorb the agent via inhalation and via the skin. The symptoms of sarin poisoning vary depending on the dose received (page 32), though a classic symptom is miosis (extreme contraction of the pupils). In severe cases, the symptoms include cramps, muscular contraction, seizures, severe pain, and severe respiratory distress; the cause of death is asphyxiation by blockage of the lung muscles as well as the respiratory centre in the central nervous system. The agent or its characteristic biomarkers can be detected in biomedical samples collected from victims for some time (several days in the case of urine, and weeks in the case of blood or other tissue samples collected from survivors or during autopsies). The agent, its characteristic degradation products, and certain impurities contained in the agent mixture can also be found in environmental samples taken from the impact area.

20. According to the OPCW report,[18] the OPCW FFM attended the autopsies of three alleged victims in a neighbouring country one day after the alleged attack, and visited ten patients in three hospitals four days later to retrieve biomedical samples for analysis. It also conducted several interviews: one patient and one treating physician were interviewed during the hospital visit on 8 April, and subsequent interviews with two patients who had tested positive for sarin exposure were conducted on 31 May and 1 June, respectively. The OPCW FFM also received environmental and biological-environmental samples collected by non-governmental organisations at the alleged incident location, as well as additional biomedical samples collected at medical facilities in opposition-controlled areas. In addition, the OPCW FFM collected information from the Syrian Government during two visits to Damascus, and visited the Scientific Studies and Research Centre (SSRC) in Barza where it received environmental samples and metal fragments from the impact area which the SSRC had previously analysed.

21. While the Commission was unable to collect or test bio-medical and environmental samples, it notes that based on bio-medical samples obtained during autopsies and from individuals undergoing treatment in a neighbouring country the OPCW FFM found that these individuals were exposed to sarin or a sarin-like substance. The OPCW FFM witnessed the acquisition of these biomedical samples and applied chain of custody procedures to demonstrate sample authenticity and integrity, and the analysis was undertaken by two independent Designated Laboratories, both of which have previously demonstrated their competence for this type of analysis in official OPCW Proficiency Tests. This analysis found that the tissue samples collected from the three victims (blood, brain, hair, lung and liver tissue) who had died contained (with the exception of one hair sample) characteristic biomarkers demonstrating the exposure of the victims to sarin or a sarin-like substance. The analytical findings were consistent with the autopsy reports, which had concluded that the cause of death in all three cases had been exposure to a toxic gas.

22. Bio-medical samples of seven of the 10 persons undergoing treatment in the neighbouring country showed that they, too, were exposed to sarin or a sarin-like substance. These analytical findings were consistent with the clinical symptoms observed,

[17] A/HRC/34/64, paras. 14, 59-60; A/HRC/34/CRP.3, paras. 59-60.

[18] OPCW FFM report, paras. 3.16, 3.52-3.53, 3.64, and 4.7-4.9.

Furthermore, the OPCW FFM was able to confirm by comparative DNA analysis that two individuals who had been the source of blood samples taken in Syria without the OPCW FFM team present were identical to two patients who had given blood samples in the neighbouring country in the presence of the OPCW FFM team. The Designated Laboratory results of the biomedical samples taken from these two patients on both occasions were consistent, and showed exposure to sarin or a sarin-like nerve agent. This DNA test together with the laboratory findings confirms that there was a link between the individuals from whom biomedical samples were taken in the neighbouring country in the presence of the OPCW FFM, the site of the alleged attack, and the witness testimony.

23. Taken together, the epidemiological data available, the clinical symptomatology reported, the laboratory results of autopsy and biomedical samples taken from alleged victims, and the identity confirmation of two individuals samples of whom had been collected in the presence of the OPCW FFM subject to full chain of custody procedures as well as in biomedical samples collected at medical facilities in Khan Shaykhun [19] leave no doubt that sarin or a sarin-like agent had been released in Khan Shaykhun on 4 April, and that it killed or injured these victims.

24. The OPCW FFM could not independently verify the provenance of the additional samples it received from third parties. It attempted to corroborate the information about the collection of these samples by testimony and by verifying accompanying documents including photographs and videos taken at sample collection. The OPCW FFM reported that, although it was not in a position to categorically verify the entire chain of custody of these samples, the testimony and documentation submitted alongside the samples provided a good degree of confidence.

25. The analysis of biomedical specimen received from the Khan Shaykhun Medical Centre (blood, liver tissue, lung tissue, and hair samples taken at autopsies from three fatalities) undertaken by two OPCW Designated Laboratories confirmed exposure to sarin or a sarin-like substance.

26. The results of the analyses of the additional environmental samples (animal parts, vegetation, and soil from the impact area) showed chemical signatures consistent with a release of sarin or a sarin-like nerve agent: the presence of primary and secondary degradation products of sarin in environmental samples; fluoride regeneration of sarin and the detection of a tyrosine adduct in biological samples confirming the exposure of the dead animals to sarin or a sarin-like agent; and the detection of by-products of sarin synthesis and certain other characteristic impurities in the environmental samples.[20]

27. The OPCW FFM also received environmental samples (soil, metal fragments, bone, vegetation, and extracts) from the Syrian government, together with a video recording of the sample collection. An unnamed volunteer from Khan Shaykhun had reportedly provided these samples to the Syrian authorities, and the samples had been analysed by the SSRC Barzа. The OPCW analysed these samples at its central laboratory in Rijswijk, the Netherlands. Results of the analyses by the two laboratories (OPCW and SSRC) were broadly consistent, showing the presence of sarin and impurities related to sarin synthesis and characteristic degradation products. Both laboratories also found hexamine in some of the samples.[21] The presence of hexamine was not further explained by the OPCW FFM, but the chemical had also been found in environmental samples collected 2013 after the Ghouta incident. Two competing explanations have been offered in the past to explain the presence of hexamine — either the chemical might indicate the use of an artisanal explosive (RDX) for agent dispersion, or it had been used in the sarin synthesis as an acid scavenger. While the former explanation cannot be ruled out, the latter would be consistent with the chemicals declared by Syria in 2013 to the OPCW as part of their chemical weapons stockpile,[22] as well as with the process used in the past by the Syrian army for employing

[19] OPCW FFM report, paras. 5.90-5.95.

[20] OPCW FFM report, paras. 5.99-5.102.

[21] OPCW FFM report, paras. 5.103-5.106.

[22] *OPCW request for expression of interest (EOI)*, initially posted on the OPCW website on 20 November 2013, EOI reference OPCW/CDB/EOI/01/20913, OPCW document S/1142/2013 of 22

sarin (binary synthesis shortly before use without subsequent purification of the agent for long-term storage).

28. The Commission has independently gathered extensive information which, in the aggregate, strongly supports the claim that the victims were exposed to sarin or a sarin-like substance. Apart from the fact that none of the victims was observed to have wounds or visible injuries, the symptoms reported are consistent with those suffered by persons exposed to an organophosphorus chemical such as sarin. These include: foaming from the mouth and nose, contracted pupils, respiratory difficulties, coughing, blue lips, pale or yellow skin, loss of consciousness, dizziness, convulsions, vomiting, paralysis, and diminished heartbeat. First-responders and medical staff recalled suffering from headaches, nausea, congested chests, and blurred vision after treating patients. Five weeks after 4 April, at least four interviewees were still experiencing some of these symptoms.

29. Most of the interviewees at the scene when the agent cloud was released or who arrived on location shortly thereafter stated they did not notice any particular smell, which is consistent with the fact that sarin is odourless. Some interviewees, however, reported a "bad smell". One interviewee described it as similar to drainage or waste water, while another said it resembled a strong insecticide. It should be noted that there is a fair degree of variability in the sensitivity of humans to smell, so such discrepancies are not unusual. It is also apparent from the analytical results of the environmental samples that the agent released into the atmosphere contained a number of impurities (several phosphor-organic compounds, hexamine, fluorinated compounds), which would explain the insecticide-like or otherwise bad smell perceived by some witnesses.

VII. Findings

30. The extensive body of information gathered by the Commission indicates that a Syrian Su-22 conducted four airstrikes in Khan Shaykhun at approximately 6.45 a.m. on 4 April. Photographs of remnants taken at the sites along with satellite imagery corroborate eyewitness testimony identifying the impact points of the four aerial bombs. Eyewitnesses and early warning reports identified the aircraft as a Su-22, which only the Syrian air force operates.

31. The Commission identified three of the bombs as likely OFAB-100-120 and one as a chemical bomb. Interviewees consistently stated that this latter bomb produced less noise and less smoke than the other three, and that it released a gas which spread over a distance between 300 and 600 meters. Photographs of remnants provided to the Commission by interviewees further indicate an aerial chemical bomb was employed. Further, weather conditions at 6.45 a.m. on 4 April were ideal for delivering a chemical weapon. The wind speed was just over three kilometres per hour, with no rain and practically no cloud cover. Under such conditions, the agent cloud would have drifted slowly downhill following the terrain features at the location (roads and open spaces), in a southerly and westerly direction.

32. At least 83 persons, including 28 children and 23 women, were killed, and an additional 293 persons including 103 children were injured after being exposed to gas released by the chemical bomb. Based on bio-medical samples obtained during autopsies and from individuals undergoing treatment in a neighbouring country, the OPCW FFM found that these individuals were exposed to sarin or a sarin-like substance. Information gathered by the Commission from victims, eyewitnesses, and medical personnel on the symptoms suffered by victims is also consistent with exposure to sarin. None of the victims had wounds or visible injuries, and all experienced a combination of the following symptoms: foaming from the mouth and nose, contracted pupils, respiratory difficulties, coughing, blue lips, pale or yellow skin, loss of consciousness, dizziness, convulsions, vomiting, paralysis, and diminished heartbeat.

November 2013. This UN listed chemicals from the declared Syrian chemical weapon stockpile and included binary chemical weapons components as well as 80 metric tonnes of hexamine.

33. In its investigation, the Commission considered and investigated all potential scenarios, including claims put forward by Russian and Syrian officials. The Commission has not, however, found any evidence to support the claim that HTS or armed groups had a weapons depot in the area where the chemical bomb impacted. Satellite imagery shows damage to a structure at a nearby grain silo which could correlate with the area where the victims of the sarin release were found, though the silo and a nearby bakery were empty following airstrikes last year. Furthermore, the Russian Federation Ministry of Defence and the Syrian Minister of Foreign Affairs argue that the weapons depot was hit between 11.30 a.m. and 12.30, while the evidence laid out above overwhelmingly indicates that the sarin gas was released at around 6.45 a.m.

34. Though the Commission cannot discount the possibility that interviewees did not acknowledge the existence of a weapons depot out of fear of retaliation or out of loyalty to HTS or armed groups, it notes that it is extremely unlikely that an airstrike against such a depot could release sarin stored inside that structure in amounts sufficient to explain the numbers of casualties recorded. First, if there had been such a sarin weapons depot destroyed by an airstrike, the explosion would have burnt off most of the agent inside the building or forced it into the rubble where it would have been absorbed, rather than released in significant amounts into the atmosphere. Second, the facility would still be heavily contaminated today, for which no evidence exists. Third, the scenario suggested by the Russian Federation Ministry of Defence and the Syrian Minister of Foreign Affairs does not explain the timing of the appearance of victims of sarin exposure — well before the time, 11.30 a.m., that the Russian Federation Ministry of Defence and the Syrian Minister of Foreign Affairs provided for the attack. Finally, the impurities identified in the environmental samples analysed by the OPCW indicate that the released agent had not been purified. This rules out long-term storage of large amounts of sarin, which would have required agent purification. If, on the other hand, the facility had stored the precursor materials for sarin, an explosive destruction would not have released sarin into the air. Moreover, had there been sarin production going on at the time of the attack, the amount of agent would have been small and almost all of the agent would have been burnt off or ended up as local contamination though not in the atmosphere — some agent release into the atmosphere in such a scenario cannot be ruled out but it would not nearly be sufficient to explain the number of casualties.

35. In view of the above, the Commission finds that the claim that airstrikes hit a depot producing chemical munitions or that the attack was fabricated are not supported by the information gathered. On the contrary, all evidence available leads the Commission to conclude that there are reasonable grounds to believe Syrian forces dropped an aerial bomb dispersing sarin in Khan Shaykhun at around 6.45 a.m. on 4 April. The use of chemical weapons is unequivocally banned under international humanitarian law. The use of sarin in Khan Shaykhun on 4 April by Syrian forces constitutes the war crimes of using chemical weapons and indiscriminate attacks, and violation of the prohibition on the use of weapons designed to cause superfluous injury and unnecessary suffering. The manufacture, storage, and use of sarin also violates the Chemical Weapons Convention and Security Council resolution 2118 (2013).

36. As noted above, the Commission further investigated the airstrikes which impacted Khan Shaykhun after 11.30 a.m. It found that these airstrikes struck the al-Rahma medical point while it was functioning solely as a civilian healthcare facility treating victims of the chemical attack. Based on the fact that the medical point was struck with cluster incendiary munition, which only Syrian and Russian air forces use, and that Russian and Syrian officials acknowledged that after 11.30 a.m. the Syrian air force conducted airstrikes in Khan Shaykhun, the Commission finds that there are reasonable grounds to believe that either the Syrian and/or Russian forces conducted the airstrike against the al-Rahma medical point. By bombing the al-Rahma medical point, which also destroyed ambulances, Syrian and/or Russian forces committed the war crimes of deliberately attacking protected objects, and intentionally attacking medical personnel and transport.

Characteristics of sarin[23]

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Annex 5

CHARACTERISTICS OF NERVE AGENTS AND SARIN

Properties of Nerve Agents

Sarin belongs to a group of organophosphorus chemical warfare agents called nerve agents, which are chemically and structurally related to organophosphorus pesticides. They are absorbed by inhalation, ingestion or through the skin. For volatile nerve agents such as sarin, inhalation is considered to be the primary route of entry.

In their purest form, nerve agents are colourless and odourless liquids, however colouration can vary from pale yellow to dark brown depending on the level of impurities present. Sarin is one of the more volatile nerve agents and evaporates at a similar rate to water. It breaks down fairly quickly in the presence of water (hydrolysis) to give characteristic breakdown products.

Nerve agents are particularly toxic when absorbed by inhalation, but can be absorbed following ingestion, dermal, or eye contact.

Nerve agent vapour is denser than air and therefore has a tendancy to accumulate in low-lying areas.

Effects on Humans

Nerve agents exert their toxic action through the sustained inhibition of the enzyme acetylcholinesterase (AChE). When AChE is inhibited, it is unable to break down the neurotransmitter acetylcholine (ACh). This causes a build-up of neurotransmitter at the nerve synapse which in turn causes excessive stimulation of the nervous system.

Nerve Agent absorbed through lungs or skin casues cramps, muscular contraction, seizures and severe pain, the effects on diaphragm is to lock the lungs in place, causing asphixiation and subsequently death.

Local effects such as miosis (pin point pupils), may occurr in the absence of systemic poisoning.

Dependent on the concentration exposed to and the duration of the exposure, nerve agents can cause the following symptoms:

- Mild symptoms include headache, nausea, miosis, blurred vision, tearing (lachrymation) and painful eyes; runny nose, excess salivation, sweating, muscle weakness and agitation, chest tightness.
- Moderate symptoms include dizziness, disorientation and confusion, sneezing coughing and or wheezing, marked drooling and excess mucous production, vomiting and diarrhea, marked weakness, difficult in breathing.
- Severe symptoms include severe respiratory distress, pulmonary oedema, convulsions, ventricular arrhythmias, unconsciousness, involuntary urination or defecation.

Medical treatment and antidotes

- Atropine: antagonises the effects of ACh, it is particularly effective in decreasing secretions and treating bradycardia (slow heart beats).
- Oximes: reactivation of inhibited enzymes, thereby decreasing the amount of excess ACh.
- Diazepam: Central Nervous System protector, useful to control agitation and convulsions.

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[23] OPCW FFM report, Annex 5.

Annex III

Life under siege and truces

1. In the Damascus countryside mountain town of Madaya, the Commission first documented Government forces using starvation as a weapon of war in late 2015.[1] Government forces alongside Hizbullah encircled Madaya in June 2015 as part of a military offensive against the neighbouring town of Zabadani, tightening their siege around Madaya in September, and imposing a complete blockade on goods into Madaya, Zabadani, and neighbouring Bqine. Anti-personnel landmines were used to trap civilians inside Madaya, while pro-Government snipers shot at those attempting to reach the water spring in Bqine, including young children. By December 2015, residents in Madaya resorted to eating grass, leaves, and cats which religious leaders were forced to officially sanction as permissible (*halal*). Others recalled drinking boiled water seasoned with salt and cumin for breakfast and dinner to stave off hunger pangs.

2. In March 2015, armed groups primarily under the Jaish al-Fatah formation overtook Idlib city and laid siege to the predominantly Shi'a towns of Fu'ah and Kafraya. They immediately cut-off water and electricity to the besieged population. Though Government forces were occasionally able to airdrop aid, armed groups only allowed humanitarian aid convoys to enter the enclaves sporadically over the previous over two years, leaving up to 20,000 individuals in a perilous situation. Hospitals and clinics had no supplies, which led to some women dying while giving birth. The United Nations, International Committee of the Red Cross (ICRC), and Syrian Arab Red Crescent (SARC) were last granted access to deliver humanitarian assistance to Madaya and Bqine, and Fu'ah and Kafraya in 14 March 2017, though aid had not been granted prior to that since November 2016.

3. Similarly, in the eastern Damascus municipalities of Barza, Tishreen, and Qaboun, Government forces intensified an aerial campaign in February, decimating large swathes of civilian infrastructure. By mid-March, they recaptured segments of a road between Barza, Qaboun, and Tishreen, severing any connection between the neighbourhoods, and, by May, fully besieged all three areas whereafter no humanitarian aid was allowed to enter any of the neighbourhoods. One interviewee in Qaboun recalled the shortage of food, noting civilians "did not even have dried bread to eat".

4. In order to draw an end the crippling effects of these sieges, a truce initially negotiated in September 2015 was implemented in April this year concerning Madaya and Zabadani (Damascus countryside), and Fu'ah and Kafraya (Idlib), collectively known as the "Four Towns" agreement. Similarly, in May, local truces were implemented in Barza, Tishreen, and Qaboun (eastern Damascus). All truces have been finalised in either oral or written forms, and, while the terms of each are unique to the besieged locality surrendering, details provided by interviewees reveal numerous similarities between them which have been observed over the period under review.

5. The "Four Towns" agreement was entered into between Hay'at Tahrir al-Sham and Ahrar al-Sham on the side of terrorist and armed groups, and Hizbullah, Iran, and Qatar on the other. Elements of the agreement included: the departure of fighters and an unspecified number of civilians from Madaya, Zabadani, and Bloudan towards Idlib (though the Commission notes at least 5,000 left); departure of up to 8,000 pro-Government forces and civilians and from Fu'ah and Kafraya; exchange of prisoners and corpses; and the release of 1,500 detainees by Government forces, primarily women. The agreement also included evacuation of fighters from Yarmouk camp (Damascus), among other details.

6. Local truces in Barza, Tishreen, and Qaboun were all negotiated between Government forces and armed groups, sometimes with the assistance of local council members, and implemented in May. In Barza, the initiative to negotiate a local truce

[1] A/HRC/31/68, paras. 120 and 129; *see also* International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules, at Rule 53.

stemmed primarily from the 1st Brigade of Damascus (a Southern Front affiliated armed group). It stipulated that fighters would surrender heavy weapons, and that a set number of the population would to leave to Idlib. In Tishreen, virtually the same conditions were applied, though the entire civilian population was to evacuate. In Qabun, the local truce was negotiated between Government forces and armed group leaders together with local council delegates. The agreement was orally agreed to, and stipulated that fighters would surrender heavy weapons, all tunnels leading to eastern Ghouta would be closed, and all civilians and fighters would evacuate to Idlib. Though negotiations over prisoner exchanges occurred in some cases, such exchanges were ultimately not carried out in these three municipalities.

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Ten years of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned — 2007-2017

Report of the Expert Mechanism on the Rights of Indigenous Peoples

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I. Introduction

1. In September 2016, in its resolution 33/25, the Human Rights Council amended and expanded the mandate of the Expert Mechanism on the Rights of Indigenous Peoples and decided that it should identify, disseminate and promote good practices and lessons learned regarding the efforts to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, including through reports to the Human Rights Council on the matter.

2. The present report is the first to be submitted in the context of that decision. It is intended to highlight the main legal and policy trends in the past 10 years in the application of the Declaration across the United Nations and regional and national human rights systems, and to contribute to its further implementation. It is not intended to be a comprehensive study on good practices, many of which are also reflected in the thematic studies of the Expert Mechanism.

II. Summary

3. The Declaration is the most far-reaching comprehensive instrument concerning indigenous peoples, elaborated and approved as a result of a process of nearly three decades of active engagement of indigenous leaders within the United Nations system. Since its adoption by the General Assembly on 13 September 2007, it has been overwhelmingly recognized as reflecting a global consensus on the rights of indigenous peoples, individually and collectively. The question remains as to the extent to which it is being implemented.

4. The Declaration informs the work of a variety of different actors, such as States, indigenous peoples and the different United Nations agencies, the World Bank and procedures within the United Nations system. For the past 10 years, it has influenced the drafting of constitutions and statutes at the national and subnational levels[1] and contributed to the progressive development of international and domestic laws and policies as it applies to indigenous peoples. The Declaration is reflected in the Constitutions of Ecuador, Kenya and the Plurinational State of Bolivia, drafted in 2008, 2010 and 2009, respectively. Importantly, in its article 11, the Constitution of Ecuador recognizes that the human rights established in international instruments, including not only treaties but also the Declaration, are directly applicable and enforceable.

5. Despite the advances made in terms of their formal recognition, indigenous peoples still report numerous and growing violations of their human rights. In many examples, indigenous peoples are denied political recognition by States and international actors, protection of their lands, territories, resources and environment, particularly from development activities, consultation and free, prior and informed consent between them, States and others regarding activities that affect them, and the protection of their cultures, including their languages, religions and ways of life. Indigenous women and disabled persons face particular challenges. Of further concern is the rise in the number of indigenous people who die every year while attempting to defend their rights under the Declaration.[2] Indigenous people are also subjected to daily violent attacks and threats, enforced disappearances, illegal surveillance, travel bans and the increasing trend of

[1] See, for example, the Constitution of Mexico City.

[2] Of the 281 human rights defenders killed in 25 countries in 2016, almost half had been defending their land, environment and indigenous rights. There were 185 documented killings of human rights defenders in 2015 and 130 in 2014. An illustrative case is that of Berta Cáceres, leader of the Lenca people of Honduras, who was killed in 2016 allegedly in connection with her involvement and opposition to the Agua Zarca hydroelectric project. Her daughter Bertha Zúñiga was also targeted in an armed attack in June 2017. See Front line Defenders "Annual Report on Human Rights Defenders at Risk in 2016", available from https://frontlinedefenders.org/front-line-defenders-017-annual-report-highlights-killing-of-281-hrds-in-2016.

criminalizing indigenous activists and organizations and movements, often engendered by conflicts over investment projects in indigenous territories.[1]

6. In 2016, in a movement emblematic of such conflicts around the world, thousands of indigenous peoples gathered to protest the construction of an oil pipeline over the treaty-guaranteed traditional lands of the Standing Rock and Cheyenne River Sioux tribes in North Dakota, United States of America. The project had been permitted by the Government despite the objections of the indigenous peoples in question and in the absence of meaningful consultation, with significant harm to the tribes' sacred sites and risks to its drinking water.[2] The situation, along with indigenous peoples' expressions of concern during the tenth session of the Expert Mechanism on natural resource development on indigenous lands across the world without their consent, was a significant factor in the decision by the Expert Mechanism to devote its 2018 thematic report to the issue of free, prior and informed consent, not only in the context of natural resource development, but also with respect to other State and industry activities that affect indigenous peoples' rights to land and culture, as well as legislative and restitution measures that affect them, as specified in the Declaration.

7. In the light of ongoing challenges, much more can be done to realize the true potential of the Declaration, through enhanced implementation of its provisions. The Declaration reaffirms and clarifies international human rights standards to ensure respect for indigenous peoples' rights to self-determination, cultural, language, land, natural resources, environmental protection, consultation and free prior and informed consent. Thus, recommendations and observations to States — by United Nations agencies, treaty bodies, the Permanent Forum on Indigenous Issues, special procedures of the Human Rights Council, such as the Special Rapporteurs,[3] working groups and under the universal periodic review mechanism — seeking the implementation of Declaration rights should be implemented.

8. An overview of such recommendations, as well as good practices, will serve as the basis for an analysis of the status of implementation of the Declaration [...by...] and also serve to inform the implementation of the new mandate of the Expert Mechanism as to the choice of thematic studies, definition of priorities for country engagement and other undertakings toward achieving the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples.

9. Many scholars consider that, apart from its solemn and aspirational nature, the Declaration has significant normative weight, having been formally endorsed by the majority of States Members of the United Nations.[4] As a form of international law, the Declaration may be used by courts when attempting to construe the meaning of treaties, statutes and other legal instruments. It is well established that General Assembly resolutions that declare norms can build on or reflect customary international law.[5] The declaration

[1] Such as the prosecution of defenders of the Mapuche people under anti-terrorist laws in Chile for which Chile was held liable in 2014 by the Inter-American Court of Human Rights. See [illegible] or [illegible] 279_esp.pdf.

[2] When the protestors camped out and joined forces to stop bulldozers from razing burial sites, law enforcement attacked the protestors using dogs, crowd-control spray, freezing water and rubber bullets. Dozens of people were arrested and imprisoned for asserting and protecting their rights to free speech and assembly, and to self-determination, property, natural resources, equality, treaty rights, religious freedoms, cultural expression and free prior and informed consent. See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21277&LangID=E.

[3] Including the Special Rapporteur on the rights of indigenous peoples, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, on the situation of human rights defenders, in the field of cultural rights, and on the rights of persons with disabilities.

[4] See A/HRC/15/37/Add.1.

[5] See judgment of the International Court of Justice dated 20 February 1969, in which the Court defined the requirements needed to establish new customary international law as very widespread, including representative State practice in support of the purported new rule, including the specially affected states, as well as a feeling to be obligated (opinio juris). See also https://swanthinkquestions.wordpress.com/2017/04/04/nuclear-weapons-advisory-opinion/.

expresses and reflects legal commitments under

as treaties, judicial decisions, principles and

10. The section below confirms that many of

already guaranteed by major international huma

significant normative strength, including through

national courts.

r the Charter of the United Nations, as well
tomary international law.

f the rights contained in the Declaration are
an rights instruments and have been given
h the work of the treaty bodies, regional and

III. International bodies implementin

ng the Declaration

A. United Nations treaty bodies and spec

cial procedures

11. The Declaration has strengthened the w

treaty bodies to pay particular attention to th

monitoring of human rights treaties. To some e

on the Elimination of Racial Discrimination, the

Committee on Economic, Social and Cultural R

Discrimination against Women, the Human Right

Persons with Disabilities, Committee against T

Committee on Enforced Disappearances, Subcom

Cruel, Inhuman or Degrading Treatment or P

Indigenous peoples can claim their rights in all

make explicit reference to those rights. Nonethe

restricted, as most indigenous peoples in the wor

many countries, they may also be unaware of the

protects their rights. Access to justice by indige

enjoyment of human rights and demands sp

initiatives from the various actors.

work of the United Nations human rights
he situation of indigenous peoples in the
extent, the 10 treaty bodies (the Committee
e Committee on the Rights of the Child, the
Rights, the Committee on the Elimination of
hts Committee, Committee on the Rights of
Torture, Committee on Migrant Workers,
mmittee on Prevention of Torture and Other
Punishment)[a] deal with indigenous rights.
all human rights treaties, but some treaties
theless, access to such bodies is still very
orld are not aware of their existence and, in
he Declaration and national legislation that
enous peoples is a significant issue for the
stronger communication and information

12. Under the reporting procedures of the two

Racial Discrimination has made the highest num

years (470), followed by the Committee on the R

Economic, Social and Cultural Rights (372),

Discrimination against Women (143), the Human

on the Rights of Persons with Disabilities (29),

Committee on Migrant Workers (2) and the Com

The number of recommendations made by the tre

to which indigenous rights are specifically menti

articles; the number of States that have ratified th

the extent to which indigenous peoples find into

caties, the Committee on the Elimination of
umber of recommendations in the past ten
Rights of the Child (232), the Committee on
), the Committee on the Elimination of
an Rights Committee (74), the Committee
), the Committee against Torture (23), the
ommittee on Enforced Disappearances (1).[b]
reaty bodies relates, inter alia, to: the extent
ntioned in the treaties or drawn from other
the treaty and have indigenous peoples; and
the treaty body process.

13. It is no surprise that the Committee on t

which specifically deals with the elimination o

the Elimination of Racial Discrimination,
of racial discrimination and has adopted

[a] The Committees monitor the implementation by States
treaties: the International Convention on the Elimination
Convention on the Rights of the Child; the International
Rights; the Convention on the Elimination of All Forms
International Covenant on Civil and Political Rights; the
Disabilities; the Convention against Torture and Other
Punishment; the International Convention on the Protec
Members of their Families; and the International Conv
Enforced Disappearance. The Subcommittee on Preven
Degrading Treatment or Punishment is a subcommittee

[b] The Committee on Enforced Disappearances has also
action procedure, including the cases of an indigenous
the Organización campesina de los pueblos indígenas
Lemun also brings up indigenous issues in its regu
detention.

s of the rights enshrined in the following
on of All Forms of Racial Discrimination; the
al Covenant on Economic, Social and Cultural
ns of Discrimination against Women; the
the Convention on the Rights of Persons with
r Cruel, Inhuman or Degrading Treatment or
ection of the Rights of All Migrant Workers and
vention for the Protection of All Persons from
ntion of Torture and Other Cruel, Inhuman or
e of the Committee against Torture
o considered indigenous issues under its urgent
us leader of the Yaqui nation, and the leader of
de Ayutla. The Subcommittee on Prevention of
ports following monitoring visits to places of

general recommendations and special measures on indigenous peoples, expounds greatly on the issue in the context of reporting. It advises States to implement recommendations of the Special Rapporteur on the rights of indigenous peoples to endorse the provisions of the Declaration and to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), thus contributing to the cross-fertilization of international law. The Committee on the Rights of the Child and Committee on Economic, Social and Cultural Rights make similar recommendations.

14. Treaty bodies often address indigenous people's rights under general non-discrimination articles. For example, the Human Rights Committee has dealt with access to social services, representation in public offices, negative stereotypes, hate speech, domestic violence, police violence, disappearance, overrepresentation in prison and many other such issues as they relate to indigenous peoples. Other relevant dimensions dealt with by the Committee under the rubric of protection of human rights defenders include trafficking, birth registration, the right to personal security and protection of activists for indigenous people's rights.

15. Some treaty bodies raise indigenous issues under articles specific to their rights. For example, the Committee on the Rights of the Child raises indigenous issues under article 30 of the Convention on the Rights of the Child, which makes a specific reference to indigenous children. The Human Rights Committee applies article 27 of the International Covenant on Civil and Political Rights, which refers to minority rights.[10] Under that article, the Committee addresses the impact of development projects and evictions on land rights and the welfare of indigenous peoples, through application of the principle of free prior and informed consent as the guiding norm for compliance with a State's duty to consult. For example, in its concluding observations on Thailand, the Committee stated, inter alia, that the State party "should ensure that prior consultations are held with a view to obtaining their free, prior and informed consent regarding decisions that affect them, in particular with regard to their land rights".[11]

16. Other recent issues raised under article 27 of the Covenant, relating to country-specific situations, involved: (a) the need for prompt demarcation of indigenous lands; (b) encouraging legislation recognizing indigenous land rights; (c) conferral of title recognition on a group as an indigenous people; (d) active protection of language; (e) effective access to land restoration processes; (f) the provision of adequate resources to indigenous representative bodies; (g) effective access to justice; (h) length of negotiations; (i) strengthening indigenous education and child and family services; (j) the protection of sacred areas; and (l) participation in law-making.

17. The treaty bodies deal with a range of civil, political, economic, social and cultural rights as they relate to indigenous peoples. Across the treaty bodies, recurring themes include: (a) concerns on self-identification; (b) access to justice; (c) lack of consultation and free prior and informed consent, including indigenous women, and often with respect to large-scale projects; (d) failure to safeguard the environment; and (e) access to and protection of lands, territories and resources. Certain developing issues of particular interest include the recommendation that States ensure respect by companies of the rights of indigenous peoples, even when acting outside the State;[12] that the Committee approve the efforts by States to promote self-determination for indigenous peoples;[13] and the review of indigenous institutions for compatibility with human rights norms.[14]

18. In the past 10 years, the Human Rights Committee has continued to contribute to a comprehensive body of jurisprudence on indigenous peoples through its individual communications procedure, under the Optional Protocol to the International Covenant on Civil and Political Rights. Through that procedure, it has dealt with a large number of communications on indigenous peoples, in particular relating to article 27 of the Covenant,

[10] See general comment No. 23 (1194) on the rights of minorities.

[11] See CCPR/C/THA/CO/2, para. 44.

[12] See CERD/C/NOR/CO/21-22, para. 24, and A/HRC/17/31.

[13] See CCPR/C/SWE/CO/7, para. 38.

[14] See CCPR/C/ECU/CO/6, paras. 37-38.

which relates to the rights of persons belonging to minorities to enjoy their culture, to profess and practise their religion or to use their language, as well as articles 26 (on non-discrimination) and 19 (on freedom of expression). In one particular case,[17] the Committee found a violation of the right of the author and other members of her group to enjoy her own culture following the diversion of water from the Aymara pasture land. The Committee found there had been no free prior and informed consent given for the project and no independent study on the impact of the construction of water wells. The State was required to provide the author with an effective remedy and reparation measures commensurate with the harm sustained.

19. The treaty bodies have continued to draft general comments on issues relating to indigenous peoples, some of which draw from the Declaration. In its general comment No. 21 (2009) on the right of everyone to take part in cultural life, the Committee on Economic, Social and Cultural Rights draws explicitly upon the Declaration and includes a section devoted to indigenous peoples' cultural rights. In its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, the same Committee made explicit reference to numerous articles of the Declaration,[18] in particular those dealing with the rights to consultation and free prior and informed consent, land and resources, education, health, remedies, protection of the environment and cultural heritage. In its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee on the Rights of the Child urged States to adopt a rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No. 169 and the Declaration.[17] The Subcommittee on Prevention of Torture made a statement on indigenous justice, drawing from language in the Declaration and ILO Convention No. 169, in which it recognized that indigenous peoples have the right to maintain and strengthen their own legal institutions and the right not to be subjected to forced assimilation or destruction of their culture.

20. Under its "Early-Warning" procedure,[19] the Committee on the Elimination of Racial Discrimination has considered several situations of indigenous peoples. For example, it considered the case of the Aru indigenous peoples in Indonesia[20] in relation to the granting of a permit for sugar cane plantations, and that of the Shor peoples in the Russian Federation[21] in relation to the destruction of the village of Kazas and possible destruction of the village of Chuvashka by mining activities. In May 2017, the Committee sent a letter under that procedure to the United States concerning allegations about the potentially discriminatory impact of the construction of a wall along the border between the United States and Mexico on the Kikapoo, Ysleta del Sur Pueblo and Lipan Apache indigenous communities.[21]

21. Recommendations from treaty bodies are ineffective if not implemented. While tracking follow-up to recommendations is a complicated task, the treaty bodies can track the implementation of some of their concerns through their follow-up procedures. For example, under the follow-up to the reporting procedure, the Human Rights Committee gave Finland an "A" grade (satisfactory implementation) for the measures taken to facilitate education for all Sami children in their own language in the territory of the State party.

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[17] Communication No. 1457/2006, *Poma Poma v. Peru*, Views adopted on 27 March 2009.

[18] Articles 10, 14, 19, 24, 26, 28-29 and 31-32.

[17] See also Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015) on women's access to justice and No. 34 (2016) on the rights of rural women, including the need for free prior and informed consent of rural women prior to implementing development projects. The Committee on the Rights of Persons with Disabilities is currently drafting a general comment on article 6 of the Convention on the Rights of Persons with Disabilities, on women with disabilities, including references to indigenous women.

[19] See www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx.

[20] See www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia28092015.pdf.

[21] See http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_ALE_RUS_7906_E.pdf.

[21] See http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_8210_E.pdf.

22. States also often provide good follow-up to adverse findings under the individual communications procedures of the treaty bodies. For example, in one particular case,[23] Argentina paid $53,000 in compensation plus a monthly life pension and provided a property and a scholarship to an indigenous girl who was raped and subjected to discrimination on the basis of her gender and ethnicity. It also initiated compulsory training to prevent gender discrimination and violence against women. At its 1098th session, the Committee considered the implementation of that friendly settlement to be satisfactory.[24]

23. Many opportunities remain for the treaty bodies to be informed by the Declaration, a point recognized at the 2014 World Conference on Indigenous Peoples, at which participants called upon the treaty bodies to consider the Declaration in accordance with their respective mandates.[25] The Human Rights Committee, while dealing frequently with issues relating to the rights of indigenous peoples, has refrained from making explicit refers to the Declaration owing to the initial opposition by some Member States to its adoption. Given that the situation has now changed, perhaps it is time for the Committee to change that practice. Treaty bodies may consider cross-referencing their recommendations to contribute to the coherence and consistency on indigenous issues. In that regard, the Committee on the Elimination of Discrimination against Women may consider drafting a general recommendation on indigenous women and girls, the violence against whom is recognized as a global phenomenon.

24. The special procedures of the Human Rights Council also take up indigenous issues, in particular through the work of the Special Rapporteur on the rights of indigenous peoples.[26] Other special procedure mandate holders also take up issues related to indigenous peoples, including those dealing with the environment, housing, cultural rights, violence against women, transnational corporations and business enterprises, food, discrimination against women in law and in practice and extreme poverty.

25. In recent years, the issues raised by the special procedures have centred around the rights of indigenous peoples to consultation and participation in the issues that affect them; the precarious situation of indigenous peoples living in urban settlements; lack of citizenship of indigenous peoples as a barrier to access to water, food and other basic needs; discriminatory practices against women and girls, in particular in the implementation of laws on citizenship and nationality; and the adverse impact of business-related activities on indigenous peoples.

26. For example, the Special Rapporteur on extreme poverty and human rights presented a human rights-based framework for including people living in poverty in the design, implementation and evaluation of policies and programmes. The framework drew heavily on ILO Convention No. 169 and the Declaration on the Rights of Indigenous Peoples, as they relate to consultation with and participation of indigenous peoples in decision-making processes.[27] The Special Rapporteur in the field of cultural rights, during a visit to Botswana, encouraged the Government to consult closely with the San people in relation to implications of the inclusion of the Okavango Delta on the World Heritage List of the United Nations Educational, Scientific and Cultural Organization (UNESCO).[28]

B. Universal periodic review

27. A total of 991 recommendations on indigenous peoples were made during the first two cycles of the universal periodic review. In its third cycle, initiated in May 2017, a considerable number of recommendations were made by the Working Group on the Universal Periodic Review regarding indigenous peoples' rights, including a recommendation to make reference to the situation of indigenous peoples in voluntary

[23] Communication No. 1610/2007, *L.N.P. v. Argentina*. Views adopted on 18 July 2011.
[24] See A/69/40 (Vol. I).
[25] See General Assembly resolution 69/2, para. 29.
[26] A/72/186.
[27] See A/HRC/23/36.
[28] See A/HRC/30/25, para. 68.

isolation, received by Ecuador.[28] Some countries have received numerous recommendations, including Australia, Canada, Chile, New Zealand and Paraguay. Those recommendations cover a broad spectrum of rights under the Declaration, including in support of the rights of indigenous peoples to: preserve their languages, lands and culture; reduce the negative impact on them from mining; adopt laws prohibiting discrimination against them; and guarantee the right to life and safety of human rights defenders.

28. Many of the recommendations of the Working Group were that States adhere to the Declaration and implement the recommendations and decisions of the treaty bodies and regional mechanisms. Including the Declaration as one of the standards on which the universal periodic review is based, as proposed by the Expert Mechanism in 2013,[29] would further enhance the implementation of the Declaration in that process. Under its amended mandate, the Expert Mechanism will have a role in providing Member States, upon their request, with assistance and advice for the implementation of recommendations made under the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms.[30] It is to be hoped that States, which have the principal responsibility for adopting legislative measures and public policies to implement the rights recognized in the Declaration (article 42) will take advantage of that new mandate to better implement recommendations and decisions of all human rights bodies. Indigenous peoples may also wish to take advantage of the new role of the Expert Mechanism and seek its assistance with respect to implementation.

29. The greater effort being made to ensure that recommendations are specific, measureable, achievable, relevant and time-bound is a positive step forward in the protection of indigenous peoples' rights and should assist implementation of recommendations. Under the universal periodic review procedure, States either "accept" or "take note" of the recommendations made. Implementation is effected through domestic measures, including the adoption of legislation or policies, which requires political and financial prioritization. States may have mechanisms through which indigenous peoples can participate when planning their budgets; some, such as Paraguay, do so through specific national action plans. National human rights institutions also play a key role in that regard.

30. As an example of implementation under the universal periodic review process, a growing number of African States are recognizing the existence of specific ethnic groups that self-identify as indigenous peoples, and are taking concrete commitments to address their situations. That was the case, for example, in Gabon in 2012, Namibia in 2011 and Uganda in 2011.[31] In addition, the Government of Namibia is currently drafting a white paper on indigenous peoples, in implementation of a commitment made under the review process. Some States have also taken action to improve consultation and participation with indigenous peoples, taken measures to try and improve violence against indigenous women and girls, and have pledged to ratify ILO Convention No. 169, following recommendations made during the review.[32]

31. It is difficult to see how the recommendations of international bodies can be pertinent, relevant and implementable without the participation of indigenous peoples affected by them. It would thus be important for States, United Nations specialized agencies and intergovernmental bodies to provide information, technical and financial support, without limiting the independence of indigenous peoples, to allow for the participation of indigenous peoples, including indigenous women, during the whole cycle of the universal periodic review process, special procedures activities and treaty bodies monitoring processes (see arts. 39 and 41 of the Declaration).

[28] See http://cdes.org.ec/web/llamado-de-atencion-de-onu-y-organizaciones-sociales-sobre-el-derecho-a-la-vida-de-los-pueblos-aislados/.

[29] See A/HRC/24/49, para. 11.

[30] See Human Rights Council resolution 33/25, para. 2 (d).

[31] See K. Broch Hansen, K. Jepsen and P. Leiva Jacquelin (eds.), *The Indigenous World 2017* (Copenhagen, April 2017), available from www.iwgia.org/iwgia_files_publications_files/0760_THE_INDIGENOUS_ORLD_2017_eb.pdf.

[32] See for example, the midterm reports of Argentina, Chile and Finland. Available from www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx.

C. Regional mechanisms

32. In the past 10 years, indigenous peoples have availed themselves of the regional human rights bodies, such as the African and inter-American human rights systems, to develop and interpret rights, including by citing the Declaration. The cases below confirm that indigenous peoples' rights to their lands, territories and resources, as well as the norm of free prior and informed consent, are part of the corpus of binding international human rights law. This is also demonstrated by the citation of human rights law in national case law. It is disappointing that such persuasive jurisprudence remains poorly implemented.

33. The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights are leading the way on implementing the Declaration in Africa. To that end, they have made landmark decisions on the rights of indigenous peoples, especially in relation to their cultural rights and their rights to lands, territories and resources.

34. Two leading cases from the African system on land rights are worthy of mention. In the case of the *Endorois Welfare Council v. Kenya*[33] of 2 February 2010, the African Commission declared that the expulsion of the Endorois from their ancestral lands violated numerous human rights of the African Charter on Human and People's Rights, including the right to property, culture, disposal of wealth and natural resources. It ordered Kenya to restore the Endorois to their historic land and to compensate them. That was the first time that African indigenous peoples' rights over traditionally owned land had been legally recognized and the first ruling of an international tribunal on a violation of the right to development. In its judgment, the African Commission drew on articles 8 (2) (b), 10 and 25-27 of the Declaration, as well as the *Saramaka* case from the Inter-American Court of Human Rights (see para. 39 below).

35. In the case of *African Commission on Human and Peoples' Rights v. Republic of Kenya (the Ogiek case)* of 26 May 2017,[34] which also related to expulsions, the Court found similar violations against Kenya as in the *Endorois* case.[35] That was one of the first cases of the Court and its first decision on the rights of indigenous peoples. In its judgment, the Court drew on articles 8 and 26 of the Declaration and general comment No. 21 (2009) of the Committee on Economic, Social and Cultural Rights on the right of everyone to take part in cultural life. Those cases should contribute to a better understanding and greater acceptance of indigenous rights in Africa and be an incentive to all States to involve indigenous peoples in the development process.

36. Under their reporting procedures, both the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights have advised Kenya to implement the decision in the *Endorois* case and the Committee on the Elimination of Racial Discrimination recently noted its concern in response to reports of ongoing forced evictions of the Ogiek peoples.[36] This interplay between the regional and international human rights bodies demonstrates the positive effect that such cooperation can have on the coherence and consistency of international human rights law for the benefit of indigenous peoples.

37. While it may be a little early to expect the *Ogiek* case to be implemented, it is unfortunate that, after more than seven years, the *Endorois* case remains unimplemented. The Office of the United Nations High Commissioner for Human Rights (OHCHR) is playing its part in trying to ensure implementation of the cases and organized a workshop in Nakuru, Kenya, in August 2016, with the senior human rights adviser in Kenya to enhance dialogue between all stakeholders. At the meeting, participants discussed a co-management

[33] See www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_0.pdf.

[34] See http://en.african-court.org/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples'%20Rights%20v.%20the%20Republic%20of%20Kenya..pdf.

[35] Despite an allegation relating to the right to life, the Court found no violation of the requisite article, (art. 4).

[36] See CERD/C/KEN/CO/1-4, CERD/C/KEN/CO/5-7 and E/C.12/KEN/CO/2-5.

plan process for Lake Bogoria and adopted a roadmap, including key recommendations and ways forward.

38. Apart from its decisions, the African regional human rights mechanisms contribute to achieving the goals of the Declaration in other ways, including through resolutions on climate change and World Heritage Sites in Africa; participation in the World Conference on Indigenous Peoples; and active participation in reviewing the World Bank Environmental and Social Framework.

39. The inter-American human rights system has made important contributions to the development of international law on indigenous rights, citing the Declaration, adding value, legal analysis and further legitimizing its contents. In the case of *Saramaka People v. Suriname*,[37] of November 2007, the Inter-American Court of Human Rights decided that, although the Saramakas were not an indigenous community, they had certain resemblances with traditional indigenous communities and therefore enjoyed the same rights. As a consequence, they did not need a title in order to own the lands (i.e., possession was sufficient).

40. While that judgment appears to have been partially implemented,[38] the most crucial measures concerning new legislation, non-repetition and the granting of a title do not appear to have been realized. Worryingly, it is reported that Suriname has continued to grant new concessions within the Saramaka community's territory since the judgment was rendered.[39] In 2015, the Committee on the Elimination of Racial Discrimination communicated its concern to Suriname about the lack of implementation of the most essential parts of the judgment.[40] The Court continues to supervise the full implementation of its decision.

41. In *Xákmok Kásek v. Paraguay*, of 24 August 2010,[41] relating to the expulsion of an indigenous community, the Court found several violations of the American Convention on Human Rights. The case strengthens the Court's position on the existence of a right to property of indigenous peoples under certain circumstances without official title, and confirmed its jurisprudence on the relationship between land and the survival of a community when the land is used for economic, cultural, social or religious purposes. The Court also recognized a relationship between the right to life and the rights to water, education and food, among others. Disappointingly, it would appear that the Kásek community of Paraguay was only able to re-occupy their respective historic lands by force.[42]

42. In *Kichwa Indigenous People of Sarayaku v. Ecuador*,[43] following damage caused by a company (contracted with the State) conducting seismic exploration on Sarayaku lands, the Inter-American Court of Human Rights found numerous violations of the American Convention on Human Rights. Notably, it reiterated its jurisprudence that consultations should be undertaken with good faith, through culturally adequate procedures, with the aim of reaching an agreement, and the consultation should be prior, informed and culturally appropriate. It established that consultation was the duty of the State and could not be delegated to third parties. In its deliberations, the Court made reference to articles 15 (2), 17 (2), 19, 30 (2), 32 (2), 36 (2) and 38 of the Declaration.

43. In *The Maya Leaders Alliance v. The Attorney General of Belize*,[44] the Caribbean Court of Justice affirmed the rights of the Mayan indigenous communities over their traditional lands and indicated that no concessions should be granted for exploitation of

[37] See www.worldcourts.com/iacthr/eng/decisions/2008.08.12_Saramaka_v_Suriname.pdf.

[38] See www.escr-net.org/caselaw/2014/case-saramaka-people-v-suriname.

[39] See CCPR/C/SUR/CO/3, para. 47.

[40] See CERD/C/SUR/CO/13-15, para. 29.

[41] See www.worldcourts.com/iacthr/eng/decisions/2010.08.24_Xakmok_Kasek_v_Paraguay.pdf.

[42] See Open Society Justice Initiative, "The Impacts of Strategic Litigation on Indigenous Peoples' Land Rights" (Nairobi, 21-22 June 2016). Available from www.opensocietyfoundations.org/sites/default/files/slip-landrights-nairobi-20161014.pdf.

[43] See www.escr-net.org/sites/default/files/Court%20Decision%20_English_.pdf.

[44] See www.elaw.org/system/files/bz.mayaleaders_0.pdf.

natural resources without the consent of the concerned indigenous peoples. In arriving at its decision, the Court made reference to articles 26-28 of the Declaration, indicating that, although it was not binding, the Declaration was relevant for the purposes of interpreting the Constitution of Belize as it related to indigenous rights.

D. United Nations agencies and other multilateral actors

44. OHCHR continues to engage with indigenous peoples to support implementation of the Declaration, through its field offices. For example, the OHCHR office in Guatemala, along with the United Nations Voluntary Fund for Victims of Torture, provided support to indigenous women in a landmark 2016 case in which a Guatemalan court recognized as a crime against humanity the sexual violence committed against indigenous women of the village of Sepur Zarco during the internal armed conflict in the 1980s. Recognition of indigenous peoples' rights and their inclusion and participation in the review of the United Nations Development Assistance Framework and/or workplans by all country offices, in line with the Declaration/ILO Convention No. 169, would ensure a more robust approach to indigenous issues across the United Nations system.

45. As well as the Expert Mechanism, the other two United Nations mechanisms supporting indigenous peoples — the Permanent Forum and the Special Rapporteur on the rights of indigenous peoples — provide important guidance and recommendations to all stakeholders in the implementation of the Declaration. The coordination between them is a good example of a coherent approach to the implementation of indigenous rights. This includes the participation of the Special Rapporteur in the sessions of the mechanisms, allowing for parallel meetings with indigenous peoples' representatives and others, joint statements and coordination meetings. Even closer collaboration will be required as the Expert Mechanism develops its new mandate. Partnerships with national human rights institutions, which have become increasingly important in helping to achieve the aims of the Declaration, should be further encouraged in this context.

46. In 2014, Member States reaffirmed their support for the Declaration at the World Conference on Indigenous Peoples, the outcome document of which[45] contains many commitments, two of which are of particular significance. One commitment culminated in the General Assembly consultation process aiming to enhance the participation of indigenous peoples' representatives in meetings of United Nations bodies on issues affecting them. Those consultations are ongoing and have so far produced a draft resolution that is currently before the General Assembly, and the appointment of indigenous co-facilitators in the Conference. However, additional work is required to ensure all bodies and organizations throughout the United Nations system enable the participation of indigenous peoples' own representatives and institutions in relevant meetings on issues affecting them.

47. The second significant commitment made by States through the United Nations relates to the preparation of national action plans to implement the Declaration. While some States have developed sector-specific national strategies relating to indigenous peoples,[46] to date only a small number of States, including El Salvador and Paraguay, appear to be developing specific action plans for indigenous peoples. It is relevant to note that the Paraguayan national action plan also makes reference to the protection of indigenous peoples in voluntary isolation, an issue on which OHCHR published guidelines in 2012 reflecting Declaration rights. It is difficult to see how States can comprehensively realize the full set of Declaration rights without an action plan that covers all the articles in the Declaration, or without taking into account the findings and recommendations of international human rights mechanisms, or without the participation of all sectors of indigenous people's society.

48. A further element to come out of the World Conference on Indigenous Peoples was a request that the United Nations develop a system-wide action plan on indigenous peoples to develop a coherent approach to achieving the ends of the Declaration. In 2011, ILO,

[45] General Assembly resolution 69/2, annex.

[46] Australia, Finland, New Zealand and the Philippines.

together with OHCHR and UNDP, launched the United Nations Indigenous Peoples' Partnership, which presently also includes the United Nations Children's Fund, the United Nations Population Fund and UNESCO. An action plan was introduced to indigenous peoples and Member States at the fifteenth session of the Permanent Forum in May 2016. Since then, there has been a media and awareness-raising campaign as well as a mapping of guidelines, policies and manuals relating to indigenous issues across the United Nations system. The Partnership has been involved in inception-phase projects that have been implemented in six countries across Africa, Latin America and Asia. The 2015 ILO strategy for action concerning indigenous and tribal peoples commits it to contribute actively to this system-wide action plan. Since 2007, five additional countries have ratified the Convention (the Central African Republic, Chile, Nepal, Nicaragua and Spain).

49. Other United Nations agencies have also implemented the Declaration, such as the International Fund for Agricultural Development, which has adopted a policy engagement with indigenous peoples and established a permanent indigenous peoples forum and a specific grant mechanism called the "Indigenous Peoples Assistance Facility". At the country level, it has engaged in policy dialogues in implementation of the Declaration across Latin America, Asia and Africa.

50. The engagement of indigenous peoples in negotiations for the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change was a step in the right direction to help adhere to the Declaration. Unlike the Millennium Development Goals, the Sustainable Development Goals make explicit reference to indigenous peoples' development concerns and are founded on principles of universality, human rights, equality and environmental sustainability — core priorities for indigenous peoples. However, some of the main priorities for indigenous peoples are not reflected in the 2030 Agenda, such as the principle of free prior and informed consent, the right to self-determined development, legal recognition of indigenous peoples and their individual and collective rights. Implementation of the Sustainable Development Goals should be culturally sensitive, involve full participation of indigenous peoples and respect fully the Declaration. The treaty bodies may consider requesting disaggregated data and statistics that could be used to measure progress relating to indigenous peoples across the Goals.

51. On 4 August 2016, after extensive consultations, the World Bank Board of Directors approved a new set of environmental and social safeguards, including a specific environmental and social safeguard on indigenous peoples and the historically underserved traditional local communities of sub-Saharan Africa, in order to ensure that World Bank-funded development projects do not harm indigenous peoples and the environment. It will be launched in 2018 to replace its existing operational policy on indigenous peoples, which requires borrowing countries to ensure any World Bank-funded project does not harm indigenous peoples' rights and includes the norm of free prior and informed consent. The new standard should be applied consistently and without waivers, such as the one granted by the World Bank in 2016 to the United Republic of Tanzania with respect to the "Southern Agricultural Growth Corridor of Tanzania" project, which prompted strong condemnations from the Special Rapporteur, the African Commission on Human and Peoples' Rights and indigenous peoples. It is to be hoped that no further waivers will be granted in the future.

52. The World International Property Organization (WIPO) and UNESCO are working on measures relating to indigenous peoples' cultural rights, as protected under the Declaration. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is undertaking negotiations with the objective of reaching agreement on international legal instrument(s) towards the protection of traditional knowledge, traditional cultural expressions and genetic resources. Trademark, copyright and patent laws, for example, all incentivize innovation by rewarding the individual inventor or creator with monopolies over their products, with financial benefits. By contrast, the cultural expressions and traditional knowledge of indigenous peoples are often created collectively, passed down orally among generations, and may in some instances be undertaken for spiritual rather than economic purposes.

53. As articulated by representatives of indigenous peoples at the thirty-third session of the WIPO Intergovernmental Committee, held in June 2017, it is imperative that any further

negotiations of instruments by the Committee process be guided by a human rights approach that acknowledges the self-determination of indigenous peoples, as well as their rights to culture, religion, spirituality and language, as defined by their own laws and customs. There should be coordination between WIPO negotiations and work by UNESCO toward the protection of other aspects of indigenous peoples' cultural heritage. Consistent with the reports of the Special Rapporteur in the field of cultural rights, the intentional destruction of indigenous peoples' cultural heritage must be stopped. The WIPO and UNESCO processes must also work to protect rights to language, speech and education, consistent with the Declaration.

54. The UNESCO Medium-Term Strategy for 2014-2021 commits it to implement the Declaration across all relevant programme areas. In 2011, within the framework of the tenth anniversary of the Universal Declaration on Cultural Diversity and the celebration of World Science Day for Peace and Development, UNESCO decided to embark on a process to elaborate a policy on engaging with indigenous peoples.[47]

55. The draft policy recognizes both collective and individual rights, includes human rights language, refers to the system-wide action plan and respects cooperation with United Nations mechanisms on indigenous peoples' rights. However, it could be more explicit on the cross-cutting character of culture for the implementation of other rights and, on the issue of education, could state a clearer position toward the recognition of indigenous peoples' own education systems. The policy could include proposals to strengthen the implementation of UNESCO instruments that affect indigenous peoples and should be explicit in respecting the principle of free prior and informed consent. The policy could also reflect the implementation of the outcome document of the World Conference on Indigenous Peoples, articles 11 and 12 of the Declaration and how existing legally binding instruments can best serve as tools for the repatriation of ceremonial objects and human remains of indigenous peoples.

56. The role of UNESCO as a leading agency to prepare for and implement the International Year of Indigenous Languages in 2019, proclaimed by the General Assembly, should be supported by all stakeholders in the United Nations system and beyond.

IV. Domestic courts and national bodies

57. There are many ways domestically in which the Declaration is implemented in States, through the courts and other bodies, including national human rights institutions and legislatures. In the past 10 years, in some regions, national courts have been instrumental in the application of Declaration rights and regional and international treaties, as they relate to indigenous peoples, in particular with respect to ownership of land, territories and natural resources. In 2007, in the case of *Aurelio Cal, et al.*,[48] the Supreme Court of Belize invoked the Declaration when interpreting the country's Constitution to protect the right of the Mayan people to their traditional lands. The Chief Justice stated, inter alia, that he found article 26 of the Declaration to be "of special resonance and relevance in the context of the case, reflecting the growing consensus and the general principles of international law on indigenous peoples and their lands and resources. He also referred to articles 42 and 46 of the Declaration to support his premise that the State had an obligation to respect the Mayan right to their lands. He ruled that the Mayan communities of Conejo and Santa Cruz held customary titles to their lands and ordered the Government to respect and demarcate their territory.

[47] See www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/ADG-SC-IntMtg-IPPolicy_PPT_12-7-17_9h30.pdf.

[48] See www.elaw.org/es/content/belize-aurelio-cal-et-al-v-attorney-general-belize-supreme-court-belize-claims-no-171-and-17. In 2008, the Committee on the Elimination of Racial Discrimination wrote to Belize following the case under its early warning procedure. See www.law2.arizona.edu/depts/iplp/outreach/maya_belize/documents/CERDLetterBelize070308.pdf.

58. Even in draft form, the Declaration has been applied. In the 2006 case of *Roy Sesana and others v. Attorney General of Botswana*,[49] the Court used the draft Declaration to rule in favour of the Basarwa (San) indigenous peoples, who were being evicted from their ancestral lands without their consent and unlawfully, and to rule that the refusal to allow them to return had been unconstitutional.

59. Similarly, in the case of *Lemeiguran v. Attorney General and ors*, relating to the IL Chamus people, where the applicant indigenous peoples claimed a violation of their constitutional right to participate in decision-making through elections, a Kenyan court ruled in favour of the applicant, on the basis of several provisions in the draft Declaration.

60. On 3 April 2014, the Supreme Court of Belize[50] ruled that permits that had been granted to an oil company for drilling and road construction had been unreasonable and unlawful. It decided that, having voted in favour of the Declaration, the State was clearly bound to uphold the general principles of international law contained therein. It confirmed that the Government had an obligation to recognize the collective land ownership of the concerned communities and also to obtain their free prior and informed consent before awarding concessions on their territories within the meaning of article 32 (2), as defined by the Special Rapporteur on the rights of indigenous peoples.[51]

61. In 2009, the Supreme Court of Chile[52] invoked indigenous peoples' right to protection of the environment in granting a petition for protection on the grounds that a forestry company had adversely affected the wetlands of the Mapuche community. In its decision, it referred to article 29 of the Declaration to the extent that indigenous peoples have the right to conservation and protection of the environment.

62. In the *Independencia aqueduct* case, the Supreme Court of Mexico in 2012[53] ordered the State to consult with the Yaqui tribe to determine whether the construction of the Independencia aqueduct, for the purposes of carrying water from the Yaqui river to the city of Hermosillo, would cause any irreversible damage. If so, construction should be stopped. The Court relied on article 19 of the Declaration, ILO Convention No. 169 and the decision in the *Sarayaku* case (see para. 42 above). It held that prior consultation should be culturally appropriate, informed and conducted in good faith. This was the first time in Mexico that inter-American standards regarding the indigenous communities' right to consultation had been acknowledged by the Supreme Court. Unfortunately, enforcement of the decision has been slow.

63. In *Álvaro Bailarín et al.*, in 2011,[54] the Constitutional Court of Colombia ruled that, for development plans (in this case exploration and extractive activities of mineral resources) that have a major impact on indigenous territories, the State must not only consult with indigenous peoples but must also obtain their free prior and informed consent. In its decision, it made a reference to the State's obligations to abide by international law, including the Declaration.[55]

64. Several courts in Canada have cited the Declaration, including the *Batchewana* case, in 2017,[56] where a judge of the Ontario Court of Justice, ruled that the Crown must pay the legal fees of the defendants (from the Batchewana First Nation) in a criminal case after the Government withdrew nearly eight-year-old charges against indigenous men who had been

[49] See www1.chr.up.ac.za/index.php/browse-by-country/botswana/1118.html.

[50] The Supreme Court of Belize, A.D. 2014, Claim No. 394 of 2013: http://www.belizejudiciary.org/web/wp-content/uploads/2014/01/Supreme-Court-Claim-No-394-of-2013-Sarstoon-Temash-Institute-for-Indigenous-Management-et-al-v-The-Attorney-General-of-Belize-et-al-.pdf.

[51] The Court referred to A/HRC/12/34, paras. 62-63 and 72.

[52] See www.politicaspublicas.net/panel/jp/462-2009-linconao.html.

[53] See www.escr-net.org/caselaw/2013/amparo-no-6312012-independencia-aqueduct.

[54] See Judgment No. T-129 of 3 March 2011. Available in Spanish from www.corteconstitucional.gov.co/relatoria/2011/T-129-11.htm.

[55] It did not specify any particular rights of the Declaration in the decision.

[56] See www.supremeadvocacy.ca/wp-content/uploads/2017/02/R-v-Sayers-Robinson-Swanson-Robinson-2017-OCJ-web.pdf.

logging on Crown land. The judge relied on the Declaration (arts. 3, 8 (2) (b), 20, 28, 32 and 40), which he indicated had been adopted by Canada on 10 May 2016.

65. In the case of *Hamilton Health Services Corp. v. H. before the Ontario Court of Justice (2015)*, the Attorney General's decision to dialogue with the parties about an Aboriginal family's desire to use traditional medicine in treatment of their daughter's health condition was considered consistent with article 24 of the Declaration. Also, in the 2017 case of *R. v. Francis-Sioms*, the Ontario Court of Justice's use of restorative justice in sentencing proceedings for an aboriginal offender in a drug-related case was consistent with articles 5 and 11 of the Declaration.

66. The Constitutional Court of Guatemala handed down a number of judgments suspending activities of hydroelectric and mining companies for lack of consultation with indigenous peoples, specifically referring to articles 32 (2) of the Declaration.

67. On 21 October 2016, the Constitutional Court of the Republic of Sakha (Yakutia)[37] in the Russian Federation, in the context of clarifying the meaning of article 42 of its Constitution, held that it should be understood as providing, "the complete set of natural collective rights of the indigenous people of Yakutia" and provided for their "territorial unity, socioeconomic, state, legal, national, cultural and linguistic identity". It stated that article 42 was intended to "guarantee the preservation and rebirth" of the indigenous peoples of that Republic. It cited the Declaration as a conscious statement of *inalienable rights of indigenous peoples.*

68. Many of the national and regional court cases presented in the present section come from States in Latin America, the Caribbean, North America and Africa and relate, in particular, to land rights and natural resources, consultation and consent. The implementation of the cases has had varying degrees of success. In other States, there has been little or no domestic case law referring to the Declaration. The application of ILO Convention No. 169 by some States can go a long way to implementing the rights in the Declaration but does not obviate the obligation to apply the latter fully. In many States, indigenous peoples have advocated the implementation of Declaration rights through national agreements, legislation, policy and regional agreements.

69. In several countries, including Indonesia, Malaysia and the United States,[38] as well as in several regions of the Russian Federation, national human rights institutions, including Ombudsman offices, which fulfil that role in some States (e.g. Namibia), use the Declaration as a framework for monitoring the implementation of indigenous peoples' rights at the national level. Given the often inaccessibility of the court system to indigenous peoples, those institutions are often more approachable in terms of resolving problems. Some institutions, such as those in Australia and New Zealand, include indigenous rights commissioners who are specialists on these issues, who reinforce implementation of the Declaration.

70. Legislatures also contribute to the implementation of the Declaration, including in Indonesia, where legislation on the environment recognizes implicitly certain rights of the peoples, referred to as *Masyarkat Adat* or *Masyarakta Hukum Adat* (customary societies).[39] Also, in one of the Arctic regions in the Russian Federation, socio-cultural impact assessments are mandatory by law prior to undertaking industrial projects, and form part of the process of eliciting the free, prior and informed consent of indigenous peoples.[40] In 2007 the Plurinational State of Bolivia enacted a law incorporating the Declaration into the country's national legislation. Further laws were enacted in 2010 for the purposes of

[37] See decision No. 4-П of the Constitutional Court of the Republic of Sakha (Yakutia), Russian Federation, available in Russian from https://ks-sakha.gov.ru/uploads/ckfinder/userfiles/files/Постановление%2030%204-2016.pdf

[38] In the United States, the Navajo Nation Human Rights Commission has cited the Declaration in cases addressing the Navajo people's human rights to religious freedoms, sacred sites, housing, education, water, natural resource development and freedom from discrimination on the basis of race, sex, sexual orientation and gender identity.

[39] Agrarian Reform Act No. 27/2007 and Act No. 32/2010.

[40] See http://arran.no/sites/arran.no/files/arran_lule_ambro_expert_review_paper8_web.pdf.

building the creation of a plurinational State, including provisions on the rights of indigenous peoples recognized in the Declaration. In New Zealand, in 2016, the Maori Language Act was enacted aimed at revitalizing the Maori language.

71. Domestic policies also support implementation. In Cambodia, a 2009 policy on the registration of and the right to use the land of indigenous communities bolstered the 2001 Cambodian Land Law, which had laid the ground for community land titling among indigenous communities. In several African countries, ministries in charge of climate change programmes have taken on board key provisions of the Declaration, including on consultation. In Canada, in its final report,[41] the Truth and Reconciliation Commission issued numerous calls to action to use the Declaration as a framework for reconciliation, and, early in 2017, the Government of Canada assembled a working group of ministers to review all federal laws and policies as they related to indigenous peoples in line with the Declaration and supporting the implementation of the Commission's calls to action.

72. In New Zealand, the Whanganui River Deed of Settlement (Ruruku Whā) (upheld) was passed, creating legal recognition of the Whanganui River as a legal person with its own personality and all of the rights, duties and liabilities associated with that. In the United States, several federal-level executive agencies have expressed intent to comply with the Declaration, including in the area of consultation regarding indigenous peoples' sacred sites located on public lands.

73. Indigenous peoples have also mobilized themselves internally. For example, in Brazil, indigenous peoples drafted their own protocol for consultation and consent. Other such protocols are in the pipeline, including by the Wajãpi, Munduruku and the Xingu peoples. In Peru, the Wampis established an autonomous territorial government. In the United States, a number of American Indian tribal governments have taken measures to implement the Declaration, including the Muscogee (Creek) Nation, which translated substantial portions of the Declaration into the Muscogee language. Also in the United States, the Principal Chief and National Council Speaker of the Muscogee Creek Nation signed its own Declaration on the Rights of Indigenous Peoples in 2016. Several tribal governments, including the Pit River Tribe and Gila River Tribe, have enacted legislation endorsing the Declaration. Indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation, at their eighth assembly, adopted its own strategic programme, entitled "Indigenous 2021: Land, Tradition, Future".[42] Furthermore, at its seventh meeting, the Congress of Finno-Ugric Peoples endorsed a resolution on sustainable development.[43] Both of these documents reflect many articles of the Declaration. In New Zealand, the Maori have their own monitoring initiative in implementing the Declaration.

74. Despite these many good practices, indigenous peoples in some regions, including a number of States in Asia and Africa, still struggle for legal recognition and respect for self-determination. Without recognition of their status as indigenous peoples, it is difficult to see how they can claim their rights to their lands and territories, which, in turn, are inextricably linked to their culture, way of life and livelihood. These remain contentious issues in many States. States should refrain from hindering or limiting self-determination initiatives and should recognize and learn from indigenous peoples' own initiatives to advance the implementation of the Declaration at the national level.

V. New regional instruments and agreements on indigenous rights

75. The Declaration has contributed to the elaboration of regional agreements on indigenous rights. In 2016, the Organization of American States[44] approved the American Declaration on the Rights of Indigenous Peoples. Importantly, that Declaration recognized the fundamental rights of indigenous peoples to self-determination, to their ancestral

[41] Available from www.trc.ca/websites/trcinstitution/index.php?p=3.

[42] Available in Russian from www.raipon.info/documents/Docs_RAIPON/HIP%202021-1.pdf.

[43] See www.fuvcongress.org/upload/files/FU/resolutions/176/2016_1.pdf.

territories and to consultation and free, prior and informed consent. It also recognized the principle of non-forced contact to those indigenous peoples living in isolation. However, some fear that, in some respects, it may fall short of meeting the standards already set in other international instruments and those developed by the regional human rights institutions.[16] Thus, it should be read in conjunction with other international instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.

76. On 13 January 2017, a group of negotiators representing the Governments of Finland, Norway and Sweden and the three Sámi parliaments of those countries finalized the negotiations on a draft Nordic Sámi convention. The draft convention included joint Nordic approaches to safeguarding and strengthening Sámi right to self-determination, including rights to lands and resources, Sámi traditional livelihoods, language, culture and education, and confirmed that the Sámi people should have their own representative political bodies, the Sámi Parliaments. According to the draft convention, the Sámi Parliaments should give their consent to the draft convention. One of the issues that remain unclear is whether the draft convention broadens the definition of Sámi persons eligible to vote in Sámi Parliament elections to the extent that it will also include non-indigenous persons. Assuming all three countries' Sámi Parliaments and the national legislative assemblies in Finland, Norway and Sweden consent to the agreement, it will come into force in autumn 2019. That convention may be of interest to indigenous peoples worldwide, especially where indigenous people are scattered across several countries, such as the Maya, who live in Belize, Guatemala and Mexico.

77. In May 2017, the revised Deatnu/Tana agreement between the governments of Finland and Norway caused protests from the local Sámi fishing rights holders and the Sámi Parliaments. While the agreement includes a reference to the Declaration as part of its legal framework for the agreement, both Sámi Parliaments claim that it came into force without their free, prior and informed consent.

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[16] See www.ohchr.org/en/issues/ipeoples/srindigenouspeoples/pages/srindigenouspeoplesindex.aspx.